

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1264

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In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee,

-against-

ANTHONY NAPOLI,

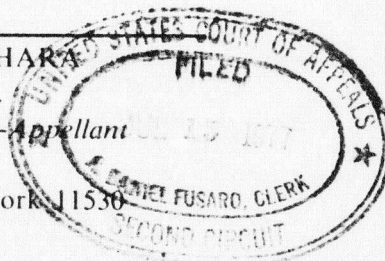
Defendant-Appellant.

*On Appeal from a Judgment of Conviction of the United
District Court for the Southern District of New York.*

JOINT APPENDIX

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1 rmr 11 Jackson-cross

2 A I went to the eye doctor --

3 MR. BLOCH: Can we have a date?

4 MR. WEISENFELD: In 1972.

5 A I went to the eye doctor once. I don't remember

6 what year it was, but I know it was once.

7 Q Did you ever go to a podiatrist?

8 A That is a foot doctor?

9 Q Yes.

10 A Yes, I did.

11 Q Do you remember when that was?

12 A No, sir.

13 Q Do you remember how many times?

14 A Once.

15 Q Now you go to the Lyndon Baines Johnson Clinic?

16 A Yes.

17 Q How long have you been going there?

18 A About a year.

19 Q How many visits did you make there in the last

20 year?

21 A About four visits.

22 Q When were you first contacted by the Government

23 or anybody representing the Government pertaining to

24 this case?

25 A In November, I believe.

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202a

1 rrnf 12

Jackson-cross

2 Q Was that by telephone call?

3 A Telegram.

4 Q Then did you have a telephone conversation
5 with somebody after you received a telegram?

6 A Yes, I did.

7 Q Did they ask you whether you saw Dr. Napoli 10
8 or 11 times, on that call?9 A They asked me how many times had I seen the
10 doctor.11 Q Did they mention to you how many times the in-
12 voice showed during that telephone conversation?

13 A Yes, they did.

14 MR. WEISENFELD: No further questions.

15 REDIRECT EXAMINATION

16 BY MR. BLOCH:

17 Q Did you tell them you did not go maybe two,
18 maybe three times?

19 A Yes.

20 Q Has Lee Avenue been your regular source of
21 medical treatment, year in, year out from 1969 to 1975?

22 A Yes.

23 MR. BLOCH: No further questions.

24 THE COURT: You are excused.

25 (Witness excused.)

1 rmrf 13

2 L Y N E T T E B R O W N, called as a witness
3 by the Government, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. BLOCH:

7 Q Mrs. Brown, where do you live?

8 A 111 Nostrand Avenue.

9 Q How long have you lived in Nostrand Avenue?

10 A About 8 or 9 years.

11 Q During 1972 were you on Medicaid?

12 A Yes.

13 Q Have you always had the same Medicaid number?

14 A Yes.

15 Q Have you ever lost your Medicaid card?

16 A No.

17 Q Have you ever lent your Medicaid card to anyone?

18 A No.

19 Q How often do you get new Medicaid cards?

20 A Once a month.

21 Q During the year 1972, did there come a time when
22 you had medical treatment?

23 A Yes.

24 Q Where did you go for the medical treatment?

25 A To Lee Avenue.

1 rrrf 14 Brown-direct

2 Q Do you know the address?

3 A No, I don't.

4 Q What type of medical facility was it?

5 A It was a medical center.

6 Q For what reason did you go to the Lee Avenue

7 clinic?

8 A I went because I thought I was pregnant.

9 Q Were you in fact pregnant?

10 A Yes.

11 Q What did you decide to do as a result of that?

12 A Have an abortion.

13 Q Anything else?

14 A And I had my tubes tied.

15 Q Will you raise your voice, please?

16 A And I had my tubes tied.

17 Q When was this operation?

18 A Sometime in June.

19 Q Of what year?

20 A 1972.

21 Q What if anything happened when you went to Lee

22 Avenue in 1972?

23 A Would you like to know -- do you want to know what

24 doctor I went to?

25 Q Yes.

1 rrrf 15 Brown-direct

2 A The day I went I saw the chiropractor and I
3 saw Dr. Alizadeh, and he is a gynecologist.

4 Q Do you know the name of the chiropractor?

5 A No.

6 Q Do you see him in the courtroom?

7 A Yes. (Indicating)

8 Q Will you describe him?

9 A Not the one in the brown, the other one, the one
10 next to him.

11 THE COURT: Let the record reflect she has
12 identified the Defendant Napoli.

13 Q What happened after you saw the chiropractor?

14 A He, I guess you would say -- this may not be
15 the right word, but massaged my back --

16 Q Were you lying down at the time?

17 A Yes. He said something about my bones didn't
18 sit, and I assume he meant in the joint, and he gave me a
19 slip and I went to x-ray to have the back x-rayed.

20 Q Did you thereafter go to another doctor?

21 A I saw Dr. Sabal and a medical doctor.

22 Q Did you thereafter have an operation?

23 A Yes.

24 Q It was after that you had the operation?

25 A Yes.

1 rrnf 16 Brown-direct

2 Q Who performed that operation?

3 A Dr. Alizadeh.

4 Q Which hospital was it performed in?

5 A St. Johns.

6 Q Did you get any further medical treatment
7 at Lee Avenue after you were in the hospital?

8 A Yes, I did.

9 Q Did you ever get any further treatment from
10 the chiropractor?

11 A No, I didn't.

12 Q How many times in your entire life have you been
13 to a chiropractor?

14 A Once.

15 Q For what reason did you not return to the chiro-
16 practor?

17 A Because my back hurt more after, and it could
18 have been because I was pregnant --

19 Q Will you keep your voice up, please?

20 A I didn't go back because my back hurt more after
21 I went to him that one time.

22 Q I show you Government's Exhibit 10. Is this
23 your name and Medicaid number on this invoice?

24 A Yes -- I don't see the Medicaid number --

25 (Indicating)

1 rrrf 17 Brown-direct

2 A Yes.

3 Q Did you see Dr. Napoli 10 times between May 31st
4 and July 3, 1972?

5 A No.

6 Q While you were in the hospital were you visited
7 by a chiropractor?

8 A No.

9 MR. BLOCH: At this time the Government offers
10 Exhibit 10-A for identification into evidence.

11 MR. WEISENFELD: No objection.

12 THE COURT: Received.

13 (Government's Exhibit 10-A received in
14 evidence.)

xx

15 Q How did you pay for your operation?

16 A Medicaid paid for it.

17 Q Did you have to show them your Medicaid card?

18 A Yes.

19 Q I show you on the hospital record a Medicaid
20 number. Is that your Medicaid number, on Government's
21 Exhibit 10-A in evidence?

22 A Yes.

23 MR. BLOCH: No further questions.
24
25

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1 rmr 18

Brown-cross

2 CROSS EXAMINATION

3 BY MR. WEISENFELD:

4 Q In 1972 you stated you went to see a gynecologist
5 before you had an abortion?

6 A Yes.

7 Q Dr. Alizadeh?

8 A Right.

9 Q After the abortion was completed, you said you
10 received more medical treatment at Lee Avenue?

11 A Yes.

12 Q Who did you receive the treatment from after
13 the abortion?

14 A Dr. Sabal and Dr. Alizadeh.

15 Q Did there come a time when you saw any other
16 doctors in 1972?

17 A I saw a medical doctor, yes.

18 Q Do you remember his name?

19 A No, I don't.

20 Q Did you see any other gynecologist?

21 A No.

22 Q You didn't see a Dr. Kashaoi on December 18,
23 1972?

24 A Not in Lee Avenue.

25 Q You didn't see Dr. Kashaoi again on December 22,

1 rnr' 19

From-cross

2 1972?

3 A He is a gynecologist?

4 Q Gynecologist.

5 A No. The only two gynecologists were Dr. Sahal
6 and Alizadeh.

7 Q Did you see a Dr. Malkani?

8 A If he is a medical doctor.

9 MR. WEISENFELD: At this time I would offer
10 this front desk book, October '72 to December '72, as
11 Defendant's Exhibit H in evidence.

12 (Defendant's Exhibit H received in

13 evidence.)

14 Q On December 18th, I would like you to look at
15 No. 58 in the book, and tell me if that is your Medicaid
16 number and if that is your name?

17 A Yes.

18 Q Will you look at the initials at the end, the
19 initials of the doctor you saw on that day?

20 A AK. I didn't know the doctor's name but I went
21 for my blood pressure and nerves.

22 Q About how many times did you go him?

23 A Three or four times.

24 Q You only saw one medical doctor?

25 A Yes.

xx

1 rrf 20 Brown-cross

2 Q And I ask you to look at December 14, 1972,
3 No. 20 in the book, and I ask you if that is your Medicaid
4 number and your name? What is the initial of the doctor
5 on that? Is that an M?

6 A That is an M -- it looks like an M.

7 Q The only doctor you saw was one non-gynecologist?

8 A And the chiropractor.

9 Q So M and AM, if they are different people --

10 A I saw one doctor.

11 Q Divette, do you have a daughter Divette?

12 A Yes.

13 Q Did she receive treatment at Lee Avenue?

14 A Yes.

15 Q Who did she see there in 1972?

16 A She was complaining about her ankle and I don't
17 know what doctor she saw because I didn't take her.

18 Q Did she ever see a hearing doctor at Lee Avenue?

19 A Not to my knowledge.

20 Q Did you go with her when she went to the clinic?

21 A No, I didn't.

22 Q How old was she at the time?

23 A About 14, 15.

24 Q There were times she went to the clinic without
25 you?

- 1 rmrf 21 Brown-cross
- 2 A Yes.
- 3 Q What about Annette, did she go to the clinic
- 4 without you at any time?
- 5 A No.
- 6 Q You always went with her?
- 7 A Yes.
- 8 Q Did she go to the clinic in 1972?
- 9 A Yes, because I took her.
- 10 Q Do you remember who she saw there?
- 11 A She saw Dr. Sabal.
- 12 Q What did she see him for?
- 13 A She was complaining about being dizzy and
- 14 nauseous, and the like.
- 15 Q Did she see any other doctor?
- 16 A Not Annette, no.
- 17 Q I ask you to look at No. 21, under date of
- 18 December 14, 1972, and is the name Annette Brown there,
- 19 with your Medicaid number?
- 20 A Yes.
- 21 Q What is the initial of the doctor who saw her
- 22 that day?
- 23 A It looks like an M.
- 24 Q But your testimony was in 1972 the only doctor
- 25 you recall that your daughter Annette saw was Dr. Sabal?

1 rnr: 22 Brown-cross

2 A Because I took her.

3 Q Was Annette treated by a podiatrist at any time?

4 A Not to my knowledge. I would have to ask her.

5 Q Excuse me?

6 A Not to my knowledge.

7 Q Were you interviewed by a John McNally, an
8 investigator for my office?

9 A Someone, but I don't remember his name.

10 Q Did you tell him your daughter Yvette was
11 treated by a foot doctor four or five times?

12 A Yvette said that, I didn't.

13 Q Can you tell me the approximate number of times
14 that you -- I am talking about for treatment for yourself --
15 that you went to the Lee Avenue clinic?

16 A Oh, several times.

17 Q How many times?

18 A Several -- a lot of times.

19 Q What would you call a lot?

20 A I went about two months.

21 MR. WEISENFELD: No further questions.

22 MR. BLOCH: The Government offers Exhibits 24
23 and 24-A for identification into evidence.

24 THE COURT: Received.

25 You are excused.

1 rmrf 23

2 (Witness excused.)

3 (We will take a short recess.)

4 (Government's Exhibits 24 and 24-A received
xx 5 in evidence.)

6 (Jury leaves courtroom.)

7 MR. BLOCH: Your Honor, with respect to Govern-
8 ment's Exhibit 1-A, I don't think I made the purpose of my
9 offer clear. I am not offering it for the truth of the
10 statement on the document, I am offering it only to show
11 that the city was billed for the services of a
12 chiropractor from Lee Avenue on that day, whether or not
13 it was from a contemporaneous time. I am not offering it
14 for the truth of the matter asserted and the hearsay rule
15 doesn't apply and it is critical evidence in the Government's
16 case.

17 Did your Honor understand my distinction?

18 THE COURT: I understand your point but I don't
19 know if it is valid. Give me a memorandum. That is what
20 I asked you for.

21 MR. BLOCH: I will endeavor to do that tonight,
22 your Honor.

23 THE COURT: Bring in the jury.
24
25

mmh 1

T5

MR. BLOCH: The purpose I ask is there has been a witness waiting all day whom I am holding.

THE COURT: That is too bad.

(Jury in box)

THE COURT: Go on, Mr. Bloch.

MR. BLOCH: Your Honor, Government's Exhibit 24 shows that on December 14, 1972, the medical record shows that Lynette Brown saw Dr. Sobel on December 18th and December 22, 1972. She had her blood pressure taken on those days.

Government's Exhibit 24 are the medical records of Lynette Brown on December 14, 1972, and they indicate she was seen by Dr. Sobel.

Government's Exhibit 10A is a record from St. John's Episcopal Hospital, 480 Herkimer Street, indicating that the witness Lynette Brown was in the hospital from June 4, 1972, to June 9, 1972, and that she was a Medicaid patient, giving her Medicaid number. The second page indicates she was admitted on June 4, 1972, and date of discharge was June 9, 1972, and the chief complaint was pregnancy, that the patient had dilatation and curettage and bilateral tubal ligation.

The third page of the exhibit indicates that the surgeon was Dr. Alizadeh and an operation was performed

mmh2

Lee-direct

on June 5, 1972, for the dilatation and curettage and
for termination of pregnancy and tubal ligation.

Government's Exhibit 10 in evidence shows that
Dr. Napoli billed for a visit on June 5, 1972 --

MR. WEISENFELD: Is this summation?

THE COURT: I understand. Received.

D O R O T H Y L E E, a witness called on behalf of
the government, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. BLOCH:

Q Mrs. Lee, where do you live?

A 90 Penn Street, in Brooklyn.

Q Where is that?

A In the Williamsburg section of Brooklyn.

Q How long have you lived there?

A 13 years.

Q During 1972 were you on Medicaid?

A Yes, I was.

Q Do you recall your Medicaid number?

A No, not offhand.

Q Have you always had the same Medicaid number?

A Yes.

1 mmh3

Lee-direct

2 Q Have you ever lost your Medicaid card so that
3 you could never find it again?

4 A No.

5 Q Have you ever lent your Medicaid card to anyone?

6 A No.

7 Q Did there come a time when you had a heart
8 attack?

9 A Yes.

10 Q When was that?

11 A In 1972.

12 Q Do you remember the month?

13 A It was during -- just before the Easter vacation.

14 Q Where did you have that heart attack treated?

15 A At the Williamsburg Center.

16 Q Do you know where that is located?

17 A It is located on Lee Avenue between Penn and
18 Rutledge.

19 Q Do you know the address?

20 A 166.

21 Q Lee Avenue?

22 A Yes.

23 Q What type of doctor treated your heart attack?

24 A A medical doctor.

25 Q After that, after you had the heart attack did you

mmh4 Lee-direct

ever return to the Williamsburg Medical Center on Lee Avenue?

A Yes, I did.

Q Did there come a time when you saw a chiropractor?

A One time.

Q How did you come to see the chiropractor?

A I was referred from the receptionist's office.

Q What, if anything, happened when you visited the psychiatrist?

A He introduced himself and examined me.

Q Did he tell you anything?

A He told me I was one-sided.

Q What do you mean?

A My body was one-sided.

THE COURT: Lop-sided?

THE WITNESS: Lop-sided.

Q What do you mean when you say he examined you? Will you describe what he did?

A I laid on my stomach and he pulled your leg back to see, you know, how flexible your body is. I sat up on the side of the table and he put my hand in front. He checked my leverage.

Q Did he say anything else to you?

A Just said I was one-sided. He gave me another appointment.

1 mmh5

Lee-direct

2 Q Did you ever go back for that second appointment?

3 A No.

4 Q Why not?

5 A If I am one-sided, what could he do to improve it.

6 Q In all your life had you ever seen a chiropractor
7 before?

8 A No.

9 Q Have you ever seen a chiropractor since that
10 date?

11 A No.

12 Q Do you have children?

13 A Yes.

14 Q How many children?

15 A I have nine altogether.

16 Q Did you take those children to Lee Avenue to the
17 clinic.

18 A The younger ones, yes.

19 Q Do you yourself go frequently to Lee Avenue?

20 A Sometimes, yes.

21 Q I show you Government's Exhibit 64 in evidence.

22 Is this your Medicaid number on that invoice and is that
23 your name? Without getting out your Medicaid card, is that
24 your name on the invoice?

25 A I would have to check my Medicaid card for my

mmh6

Lee-direct

cross

number because I don't know my Medicaid number.

Q Can I see that invoice for a second.

Did you visit the chiropractor at 166A Lee Avenue ten times between May 10, 1972, and June 14, 1972?

A No.

MR. BLOCH: No further questions.

CROSS-EXAMINATION

BY MR. WEISENFELD:

Q Mrs. Lee, you stated you had a heart attack in 1972.

A Yes, I did.

Q Approximately when did you recover from that heart attack sufficiently to be walking around?

A I was sent home for two weeks' bed rest.

Q Approximately when did you resume treatments at the Lee Avenue Medical Center after you had your heart attack?

A After the two weeks of being home.

Q How many medical visits did you make yourself to Lee Avenue since you have been going?

A A few.

Q How many is that?

A A couple. Maybe two or three. I don't know exactly offhand.

Q Two or three?

1 mmh7

Lee-cross

A Exactly offhand I would not know.

3 THE COURT: Can't you talk a little louder.

4 THE WITNESS: Exactly offhand I would not know.
5 Maybe two or three.

6 Q And Charlee Lee, do you know how many times?
7 That is a child of yours?

8 A Yes.

9 Q When she goes to the clinic you go with her?

10 A Yes.

11 Q Can you tell me how many times she has been
12 to the clinic?

13 A Maybe three or four times.

14 Q When were those visits? Throughout the years.

15 A Whenever they get sick, they get colds, I take
16 them to the doctor.

17 Q Do you know the name of the doctor she saw?

18 A It is hard to say. They never get the same
19 Pediatrician; the doctors change.

20 Q Do you have a daughter, Elizabeth?

21 A Yes.

22 Q Can you recall as to any one of your children
23 how many visits any one of them made in their entire time
24 they have been going to Lee Avenue?

25 A It is very hard to say.

mm.h.2

Lee-cross

1
2 Q Do you remember the specific names of any doctors
3 that your children saw?

4 A No, I could not recall any.

5 Q Do you remember if they saw a foot doctor?

6 A Yes, they did see a foot doctor.

7 Q Do you remember if they saw an eye doctor?

8 A No.

9 Q Do you remember if they saw a hearing doctor?

10 A No.

11 Q You don't remember?

12 A No, they didn't see any hearing doctor.

13 Q You stated they saw an eye doctor?

14 A They didn't see an eye doctor, only a foot doctor.

15 Q Do you remember how many times they saw the
16 foot doctor?

17 A One time.

18 Q And which children went to the foot doctor?

19 A Elizabeth, Alex, and Shelly.

20 Q What year was that?

21 A I couldn't say; it could have been between 1973
22 and 1974.

23 Q When you were contacted by the government
24 pertaining to this case, the first time, did you know what
25 they were investigating?

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1 mmh9

Lee-cross

2 A I was told that they were investigating me being
3 charged for ten visits to the chiropractor.

4 Q Was it after they told you that you told them
5 how many times you had seen Dr. Napoli?

6 A Yes.

7 Q Was there any time during the conversation
8 with the government where you were concerned that they might
9 be investigating something about your Medicaid activities?

10 A Will you explain that, please?

11 Q Did you think the government was looking for
12 anything to do with your records? That you were the
13 target of the investigation?

14 A No.

15 Q Were you nervous when the government called?

16 A I was not nervous, no.

17 Q You stated on direct testimony that you never
18 lent your card to anybody, is that correct?

19 A Right.

20 Q You never lent your card to a relative?

21 A No.

22 Q Did you ever use anybody else's card?

23 A No.

24 Q Did any of your children use anybody else's
25 card?

1 mmh10

Lee-redirect
Cunningham-direct

2 A No.

3 MR. WEISENFELD: I have no further questions.

4 REDIRECT EXAMINATION

5 BY MR. BLOCH:

6 Q Were you a regular attendant at the Lee Avenue
7 Clinic?

8 A Will you explain that?

9 Q Did you go regularly to the Lee Avenue Clinic?

10 A Yes.

11 Q You went many times each year?

12 A Yes.

13 MR. BLOCH: No further questions.

14 THE COURT: You are excused. Next witness.

15 MR. BLOCH: The government calls Bertha
16 Cunningham.

17
18 B E R T H A C U N N I N G H A M, a witness called on
19 behalf of the government, being first duly sworn,
20 testified as follows:

21 THE WITNESS: I live at 360 East 19th Street,
22 Brooklyn.

23 DIRECT EXAMINATION

24 BY MR. BLOCH:

25 Q What borough is it in?

1 mmh 11 Cunningham-direct
2 A Brooklyn.
3 Q During 1972 where did you live?
4 A 229 Hart Street.
5 Q During 1972 were you on Medicaid?
6 A Yes.
7 Q Have you always had the same Medicaid number?
8 A Yes.
9 Q Have you ever lent your Medicaid card to anyone?
10 A No.
11 Q Have you ever lost your Medicaid card?
12 A No.
13 Q Have you ever seen a chiropractor in your life?
14 A Yes, I have.
15 Q Where have you seen a chiropractor?
16 A I seen a chiropractor at Lee Avenue and I seen
17 one at 170 Sumner Avenue.
18 Q Referring to the Lee Avenue chiropractor, when
19 did you see him?
20 A In 1971 or 1972.
21 Q Do you recall the time of year?
22 A It was about the end of the year, when the kids
23 were getting out of school for summer vacation.
24 THE COURT: How many times did you see him?
25 THE WITNESS: Three times.

1 mar. 12

Cunningham-direct

2 THE COURT: Had you ever seen a chiropractor
3 before that?

4 THE WITNESS: No.

5 THE COURT: Did you ever see one since then?

6 THE WITNESS: Yes.

7 THE COURT: How many times?

8 THE WITNESS: Five to six times.

9 THE COURT: When?

10 THE WITNESS: In 1974 and 1975.

11 THE COURT: I just want to say to the jury not
12 to get any notions before I ask the questions that I have
13 any views one way or the other about this case. I am just
14 trying to speed things along.

15 BY MR. BLOCH:

16 Q What happened on each of your visits to Lee Avenue?

17 A I seen the chiropractor and he worked on my back.

18 Q What do you mean by working on your back?

19 A He did the isometric exercises to your back, down
20 the spine and the back of your neck.

21 Q Were you scheduled for more visits than the three?

22 A Yes.

23 Q Did you go back?

24 A No, I didn't.

25 Q Why not?

1 mmh. 13 Cunningham-direct

2 A It was too far from where I was living at.

3 Q Now, you had a phone conversation with a person
4 from the government about your chiropractic treatments,
5 is that correct, December of 1976?

6 A Yes, I did.

7 Q Did you say at that time that you didn't remember
8 that you were treated by a chiropractor there, but that
9 it was possible?

10 A Yes, I did.

11 Q Have you since recalled that you did see a
12 chiropractor?

13 A Yes, after I spoke to her I remember that I went
14 to see him.

15 Q You thought about it?

16 A Yes.

17 Q I show you Government's Exhibit 8 and ask you
18 whether the name of Bertha Cunningham appears there and
19 I ask you, have you seen a psychiatrist between May 24, 1972,
20 and June 3, 1972, ten times at Lee Avenue?

21 A I don't remember seeing him that many times.

22 Q Did you see him that many times?

23 A No, I didn't.

24 Q Are you sure?

25 A Yes.

mmh 14 Cunningham-cross

MR. BLOCH: No further questions.

THE COURT: Do you offer 8?

MR. BLOCH: 8 is already in evidence, your Honor.

CROSS-EXAMINATION

BY MR. WEISENFELD:

Q Where are you now receiving medical treatment?

A I don't go to a medical doctor at the present time.

Q Did you go to any other clinics, other than Lee
Avenue Clinic, after you stopped going?

A Yes, I did, I went to 150 Sumner Avenue.

Q That is where you saw this other chiropractor?

A Yes.

Q Is that Dr. Santori?

A Yes.

Q Did you see any other doctors at this 150 Sumner
Avenue Clinic, other than the chiropractor?

A Yes.

Q Can you tell me in 1975 did you go to that clinic?

A I went to the dentist at that time.

Q In 1975 did you see any medical doctors or
any medical practitioners, chiropractors?

A No, I didn't.

Q What about 1974?

A I don't understand your question.

mmh15

Cunningham-cross

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Q In 1974 did you go to the Sumner Avenue Clinic?

A Yes.

Q In 1974 I ask you the same questions as I asked you about 1975, did you see any medical doctors at the Sumner Avenue Clinic?

A Not that I recall.

Q What about 1973? Where did you see your medical treatment?

A I'm not sure.

Q Do you remember seeing any doctors in 1973?

A I might have.

Q Did you ever have any visits to the Lee Avenue Clinic in 1973?

A Three times.

Q Whom did you see?

A I seen Dr. Napoli.

Q Did you see anybody else?

A I might have.

Q But you don't remember?

A No, I don't.

MR. WEISENFELD: I now offer the medical records of Bertha Cunningham as Defendant's Exhibit I in evidence.'

MR. BLOCH: No objection.

(Defendant's Exhibit I received in evidence.)

mmh16

Cunningham-cross

1
2 MR. WEISENFELD: I also offer the front desk book
3 from April, 1972, to June, 1972, as Defendant's Exhibit J
4 for identification and I also move that it be received
5 in evidence.

6 MR. BLOCH: No objection.

xx 7 (Defendant's Exhibit J received in evidence.)

8 Q I show you Defendant's Exhibit I, which is a
9 medical card for the start of your treatments at Lee Avenue
10 and ask you to take a look at the dates.

11 Did you see a doctor other than Dr. Napoli
12 at Lee Avenue on May 24, 1972?

13 A I don't remember seeing any other doctor at
14 that time of the year.

15 Q I ask you to look at number 57 under May 24,
16 1972, of Defendant's Exhibit J, and ask you to tell me
17 if that is your name and your Medicaid card number?

18 A Yes, that is my name and my number.

19 Q What is the initial at the end there?

20 A The initial A.

21 Q Did you see a Dr. Alizadeh, a gynecologist, on
22 Lee Avenue on that date?

23 A I don't remember.

24 Q I ask you to look at number 107, May 26th.
25 I ask you if that is your name and if that is your Medicaid

mmhl7 Cunningham-cross
number. redirect

A Number 107 and what else --

Q Number 107. Is that your name?

A Yes.

Q Is that your Medicaid number?

A Yes.

Q And what is the initial of the doctor you
saw on that day?

A L.

Q Did you see a Dr. Feder that day?

A It is possible.

Q But you don't remember?

A No.

REDIRECT EXAMINATION

BY MR. BLOCH:

Q Did you see a Dr. Elizadeh at the clinic at
some time?

A Yes, he is a gynecologist.

Q Do you remember a Dr. Feder?

A If he was not present it was another doctor
taking over his place.

RECROSS EXAMINATION

BY MR. WEISENFELD:

Q When I asked you if you saw any doctors at

1 mmhl8 Cunningham-recross

2 Lee Avenue other than Dr. Napoli, you answered no.

3 A I said I seen a gynecologist.

4 Q A what?

5 A A GYN doctor.

6 Q When I asked you the question did you see any
7 doctors other than Dr. Napoli in 1972 you answered that
8 you saw a gynecologist? That was your answer?

9 A Yes.

10 MR. WEISENFELD: Can we have that portion of
11 the testimony read back?

12 MR. BLOCH: Objection.

13 THE COURT: Not at this point. It is the jury's
14 recollection of the evidence.

15 Q Now, you do remember that you saw Dr. Alizadeh.

16 THE COURT: I will sustain an objection to the
17 form of the question. Argumentative.

18 Q How many times did you see Dr. Alizadeh in 1972
19 at the Lee Avenue Clinic?

20 A I don't remember.

21 MR. WEISENFELD: I have no further questions.

22 REDIRECT EXAMINATION

23 BY MR. BLOCH:

24 Q Do you recall discussing this case with me
25 prior to your testifying?

1 mmh19 Cunningham-redirect

2 A Yes.

3 Q Did you mention Dr. Alizadeh at that time?

4 MR. WEISENFELD: I object.

5 THE COURT: Sustained.

6 Q Do you recall mentioning the names of any doctors
7 at Lee Avenue?

8 A I think I did. I'm not sure.

9 Q Which doctor did you name?

10 A I said I seen the GYN doctor.

11 Q And did you tell the same thing to Mrs. Morey,
12 that in 1974 you saw a GYN doctor at Lee Avenue?

13 A Yes.

14 MR. BLOCH: No further questions.

15 THE COURT: You are excused. Next witness.

16 MR. BLOCH: Your Honor, I am up to the witness
17 with the problem.

18 THE COURT: Well, use another one.

19 MR. BLOCH: We are up to the last two witnesses.

20 THE COURT: I am aware of that. I have other things
21 to do. The Court has other engagements and it has taken too
22 long. Proceed.

23 MR. BLOCH: Your Honor, we brought 14 of the 15
24 witnesses here today.

25 THE COURT: Are you out of witnesses?

1 mmh20

Ero-direct

2 MR. BLOCH: We just the one left. I will check
3 to see if the witness was brought in.

4 (Pause)

5 THE COURT: You are supposed to have all your
6 witnesses here.

7 MR. BLOCH: Your Honor, nobody ever said that
8 to me.

9 THE COURT: Then you should have read the pre-trial
10 transcript.

11 MR. BLOCH: I brought in 14.

12 THE COURT: You were told to have them all here.

13 MR. BLOCH: The government calls Roslyn Ero.

14

15 R O S L Y N E R O, a witness called on behalf of the
16 government, being first duly sworn through the
17 interpreter, testified as follows:

18 (Testimony given through official Spanish inter-
19 preter.)

20 DIRECT EXAMINATION

21 BY MR. BLOCH:

22 Q Do you live at 196 President Street, Brooklyn,
23 New York?

24 A Yes, sir.

25 Q How long have you lived at that President Street

1 mmh21 Ero-direct

2 address?

3 A Two years and a half.

4 Q Where did you live before that?

5 A 434 Central Avenue.

6 THE COURT: Did you go to the Lee Avenue Clinic
7 in Brooklyn?

8 THE WITNESS: Yes.

9 THE COURT: When?

10 THE WITNESS: 1972.

11 THE COURT: Whom did you see while you were there?

12 THE WITNESS: A chiropractor.

13 THE COURT: How many times did you see him?

14 THE WITNESS: Five times.

15 Q How many different chiropractors did you see?

16 A Two.

17 Q The five times you were among two chiropractors?

18 A Yes.

19 Q Were you on Medicaid then?

20 A Yes.

21 Q Did you ever lose your Medicaid card?

22 A Yes.

23 Q When was that?

24 THE INTER ER: I think I misunderstood
25 the question.

mmh22

Ero-direct

THE COURT: Did you ever lose your Medicaid card?

THE WITNESS: No.

Q Did you lend your Medicaid card to anyone?

A No.

Q How many times did you see the first chiropractor
at Lee Avenue?

A Twice.

Q What did he do?

A He gave me some massage to my back.

Q Anything else?

A No.

Q Did he twist your neck?

A Some massage of my neck.

Q Were you lying on a couch?

A Yes.

Q Did you have any trouble with your back?

A No.

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Pro-direct

BY MR. BLOCH:

Q How many times did you see that first chiropractor?

A Two times.

Q You then saw a second chiropractor?

A Yes.

Q How many times did you see him?

A Three.

Q Have you seen any other chiropractor at any time in your life?

A No, sir.

Q What was the most times you could have possibly seen a chiropractor at Lee Avenue?

THE INTERPRETER: I didn't hear you.

Q How many times is the most times you could have seen a chiropractor at Lee Avenue?

A No more than five times.

MR. BLOCH: Your Honor, the Government renews its offer of 1-A for identification as to the second chiropractor.

MR. WEISENFELD: I object, since she doesn't identify which -- may we have this at the side bar?

THE COURT: Just make your objection.

MR. WEISENFELD: I object. There is no indication

1 rnrif 2 Ero-direct

2 this is a record kept in the ordinary course of business
3 and she doesn't identify which chiropractor it is.

4 THE COURT: Sustained.

5 Q Did you ever visit the same chiropractor twice
6 in one day -- did you ever visit two chiropractors twice
7 in one day?

8 A No, sir.

9 Q And not on four days, is that correct?

10 A No, sir.

11 Q I show you Government's Exhibit 1 in evidence.
12 Did you make 9 visits to a chiropractor between March 8,
13 1972 and March 10, 1972?

14 A Not as many.

15 Q Did you make 11 visits between March 24th,
16 1972 and April 28, 1972?

17 MR. WEISENFELD: I object to that, because
18 the document shows 9 visits.

19 THE COURT: Overruled.

20 A No.

21 MR. BLOCH: No further questions.

22 CROSS EXAMINATION

23 BY MR. WEISENFELD:

24 Q The two different chiropractors whom you saw,
25 do you know if one of them was treating you on behalf of

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2 the other one?

4 Q And you saw that between the two chiropractors
5 you saw them five times?

7 Q How long ago was that?

8 A About five years.

9 Q When was the first time anybody asked you about
10 how many times you saw a chiropractor since you saw the
11 chiropractors?

12 A Well, it was here where I was asked.

13 Q So it has been almost five years since she has
14 given any thought to how many times she has seen a
15 chiropractor?

16 A As I remember, that was it.

17 Q How many times did you go to the Lee Avenue
18 clinic for treatment for yourself in 1972?

19 A About five times. I went to see a foot doctor
20 and I was sent to see a chiropractor.

21 Q Where have you been receiving medical treatment
22 since 1972?

23 A I have been to a private doctor.

24 Q What is his name?

25 A Dr. Georges.

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Q When was the first time you saw him, datewise?

A Quite some time ago.

Q Do you know the year?

A It has been a long time.

Q How many times in 1975 did you see your private doctor?

A About four, five times.

Q Have you seen an eye specialist at any time in the last five years?

A Yes.

Q How many times?

A Two times, and I have been to two different eye doctors.

Q Do you remember what years that occurred in?

A It was last summer.

Q Have you ever suffered from migraine headaches?

A No.

Q Have you ever suffered from headaches, just plain headaches?

A Well, I may have a simple headache now and then.

MR. WFISENFELD: No further questions.

THE COURT: You are excused.

MR. BLOCH: Your Honor, with defense counsel mentioning one doctor treating on behalf of another doctor,

1 rnr 5

Exo-cross

177

2 the Government reoffers Exhibit 1-A.

3 THE COURT: Received.

4 MR. WEISENFELD: May I be heard, your Honor?

5 THE COURT: We will adjourn at this time.

6 Don't talk about the case and don't let anybody talk
7 to you about the case.

8 The jury is excused.

9 We expect to complete this case tomorrow.

10 (Jury leaves courtroom.)

11 MR. WEISENFELD: Your Honor, we are not saying
12 that document would not be material and the question I
13 asked goes to the materiality of it, but it doesn't
14 do anything as far as the inherent unreliability of
15 it as a record not kept in the ordinary course of business.16 THE COURT: There are other ways of admitting
17 things in evidence and laying the foundation. She
18 said she was treated by two doctors and this shows another
19 doctor, it has the same headline on it, the same thing,
20 and it goes to its weight, not to its admissibility,
21 overruled.22 MR. WEISENFELD: Your Honor, I don't see how
23 the question I asked -- the ruling should have been the
24 same before I asked the question, because it was brought
25 out on direct examination that she had two.

1
2 THE COURT: I think it clarified it.

3 Have your witnesses here tomorrow, all of them.

4 MR. BLOCH: Your Honor, I believe there is
5 only one more and we have an invest out trying to find
6 that witness.

7 THE COURT: I don't see how you can put a city
8 document in without somebody from the city here to testify
9 as to it being kept in the regular course of business.

10 MR. WEISENFELD: This is that same document,
11 your Honor --

12 THE COURT: It is the same document?

13 MR. WEISENFELD: Yes.

14 THE COURT: I will exclude it.

15 MR. BLOCH: Your Honor, may I be heard?

16 THE COURT: No.

17 (Adjourned to Tuesday, May 3, 1977, 10:00 am.)
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WITNESS INDEX

<u>Name</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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UNITED STATES OF AMERICA
v.
ANTHONY NAPOLI

May 3, 1977,
10:15 A.M.

--

(Jury in box)

THE CLERK: United States of America v. Anthony
Napoli.

MR. BLOCH: Government is ready.

MR. WEISENFELD: Defendant is ready.

THE COURT: Call your witness.

MR. BLOCH: The government calls Joseph Blum.

J O S E P H B L U M, a witness called on behalf of the
government, being first duly sworn, testified as
follows:

THE WITNESS: 112-50 69th Avenue, Forest Hills.

DIRECT EXAMINATION

BY MR. BLOCH:

Q Mr. Blum, what is your occupation?

A I am in the factoring business.

Q Very quickly, explain what a factor does?

A I purchase receivables from various Medicaid
accounts.

1 mmh2 Blum-direct

2 Q What do you do with those?

3 A We process the invoices, then submit them to the
4 city for payment.

5 Q During 1972 were you the factor to Irwin Jacobson?

6 A Yes.

7 Q I show you --

8 THE WITNESS: I have some records in the other
9 room, some records of my own.

10 What did you do with them?

11 MR. WEISENFELD: May I see the exhibits, please?

12 Q I show you Government's Exhibit 1A for identi-
13 fication. Is this a document that you kept in the
14 ordinary course of business?

15 MR. WEISENFELD: Objection. May we have a voir
16 dire out of the presence of the jury on that?

17 THE COURT: On this exhibit?

18 MR. WEISENFELD: Yes.

19 THE COURT: All right. The jury may be excused.

20 (Jury excused)

21 VOIR DIRE EXAMINATION

22 BY MR. WEISENFELD:

23 Q Mr. Blum, what contact did you have or knowledge
24 about that particular document? When did you first
25 see that document?

1 mmh3 Blum-direct

2 A This morning -- well, I may have seen it before.
3 I'm sorry, but I was shown this this morning.

4 Q Other than being shown it this morning, did
5 you have anything to do with the preparation of this
6 document?

7 A No.

8 Q Do you know anything about the data that
9 that document came from of your own personal knowledge?

10 A I didn't hear you.

11 Q Of your own personal knowledge, do you have
12 any knowledge of where the information that went into
13 that invoice came from?

14 A No, I do not.

15 Q Do you know where it was kept in this entire
16 period of time?

17 A I do not. I had it at one time and I think I
18 turned it over to the Department of Investigation a couple
19 of years ago.

20 Q At the time that you turned it over to the
21 department, had you conducted any inquiry as to the data
22 on that document?

23 A - No.

24 Q Can you verify the accuracy?

25 A I don't know what you mean by accuracy. You mean

1 mmh4 Elum-direct

2 the treatments?

3 MR. WEISENFELD: Withdrawn.

4 Q Do you know anything about how the document
5 was prepared of your own personal knowledge?

6 A No, I do not.

7 Q Were you there when it was prepared?

8 A No.

9 Q Did you see the raw data from which it was
10 prepared?

11 A No, sir.

12 Q You have only see the completed document?

13 A Yes.

14 Q Which you turned over to the city?

15 A Yes.

16 Q And you don't anything about the preparation
17 of that or the maintenance of that document other than
18 what you just testified to?

19 A Yes.

20 MR. WEISENFELD: I object. This witness knows
21 nothing about how this document was made, where it was
22 prepared, but that it was prepared. He was just handed this
23 by Dr. Jacobson and he gave it to the city.

24 THE COURT: Who is this witness?

25 MR. BLOCH: He is the factor for Dr. Jacobson.

1 mmh5 Elum-direct

2 He received the invoice four days after its preparation.

3 THE COURT: You got to lay a foundation.

4 MR. BLOCH: It is not being offered for the truth
5 of the fact.

6 THE COURT: But it is being offered for the truth.
7 You want to establish the fact from that document, the fact
8 that there were more visits billed than were paid.

9 MR. BLOCH: The only fact I want to establish
10 is that those visits were billed. The witness is the
11 one who testified she never went that many visits.

12 THE COURT: The fact that they were billed
13 is an essential fact.

14 MR. BLOCH: Exactly, and this witness proves it.

15 THE COURT: You are trying to use it as evidence.

16 MR. BLOCH: Evidence of the fact that it was
17 billed.

18 THE COURT: As substantive evidence of the fact
19 that it was billed.

20 MR. BLOCH: There is no question that it was
21 billed.

22 THE COURT: Have you got the memorandum I asked
23 you for?

24 MR. BLOCH: I was going to introduce it through
25 this witness.

1 mmh6 Blum-direct

2 THE COURT: You were to have a memorandum. That
3 is what I asked you for.

4 MR. BLOCH: I do not.

5 THE COURT: Didn't you understand me yesterday
6 when I said I wanted a memorandum on the point?

7 MR. BLOCH: But I chose to do it with this
8 witness.

9 THE COURT: You chose to do it your way.

10 (Addressing the witness) You may step down.

11 I am sorry, Mr. Bloch, I am running this
12 courtroom, not you. When I want a memorandum, I want one.
13 I exclude the evidence.

14 MR. WEISENFELD: Thank you.

15 MR. BLOCH: I understood your Honor's objection
16 to be one of contemporariness.

17 THE COURT: I don't know what you understood.
18 You are through with this witness. You disobeyed what I
19 asked you to do. You took it upon yourself. Suffer the
20 consequences.

21 THE WITNESS: Am I finished? Do I go home?

22 THE COURT: You are excused.

23 (Witness excused)

24 THE COURT: Some people have to learn the hard way.
25

1 eorl

2 (Jury in box)

3 THE COURT: All right, proceed.

4 MR.BLOCH: The government calls Anita
5 Rivera.

6
7 A N I T A R I V E R A , called as a witness
8 by the government, being first duly sworn,
9 testified as follows:

10 DIRECT EXAMINATION

11 BY MR. BLOCH:

12 Q Mrs. Rivera, directing your attention to
13 1972, where did you live?

14 A At 178 Rutledge Street.

15 Q At that time you were on Medicaid?

16 A Yes.

17 Q Do you have children?

18 A Yes.

19 Q How many?

20 A Two.

21 Q How old are they?

22 A Seven and three.

23 Q Have you always had the same Medicaid number?

24 A Yes.

25 Q Have you ever lent your card to anyone?

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Rivera-direct

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A No, I have not.

Q Have you ever lost your Medicaid card?

A Yes.

Q Did you lose your Medicaid card in July or August of 1972?

A Approximately the exact date I would not be able to tell, but it was during the hot months, yes.

Q Did you lose your Medicaid card during those months?

A Yes.

Q Was it in 1972?

A I would say the end of '72 going into '73.

Q You lost your Medicaid card at the end of 1972?

A Yes.

Q Did you visit Lee Avenue Clinic in Brooklyn?

A Yes, I did.

Q Do you recall the address?

A 166 Lee Avenue.

Q Who runs that clinic?

A Alizadeh.

Q Did there come a time when you saw a chiropractor at Dr. Alizadeh's clinic?

A Yes.

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Rivera-direct

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Q What year was that?

A '72.

Q How did you come to see the chiropractor?

A I went to the eye doctor there and I was told
I should see the chiropractor.

Q Do you know the chiropractor's name?

A Yes.

Q What was his name?

A Napoli.

Q Do you see him in court today?

A Yes.

Q Would you please point him out?

(Witness complies)

Q Would you describe where he is sitting?

A Yes, next to the gentleman there on the left.

THE COURT: Does he have glasses or doesn't
he?

THE WITNESS: No, he doesn't.

THE COURT: The record will reflect she has
identified the defendant.

Q What happened when you went to the chiropractor?

A - I saw the chiropractor and I was told that
there was something wrong with my spine and I should go
back.

eor4

Rivera-direct

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2 Q Did he do anything to you? Did you have
3 any treatment at the time?

4 A Yes, he checked me thoroughly and he told me
5 to go back, but I didn't go back.

6 Q How many times in all did you see this
7 chiropractor?

8 A This chiropractor once.

9 Q When you saw this doctor, did you complain
10 about anything being wrong?

11 A No, I did not.

12 Q How many times have you been to a chiropractor
13 in your life?

14 A Twice.

15 Q When did you go to the second chiropractor?

16 A The same office, but different chiropractor.

17 Q How many times did you see the second
18 chiropractor?

19 A Once only.

20 Q In your whole life how many visits have you
21 made to chiropractors?

22 A Twice.

23 Q I show you Government Exhibit 16 in evidence.
24 Is this your Medicaid number and your name on this
25 invoice?

1 eor5 Rivera-direct-cross

2 A I don't know my Medicaid number. Is it all
3 right if I check?

4 MR. BLOCH: Is it stipulated that it is her
5 Medicaid number?

6 MR. WEISENFELD: Yes.

7 Q You need not check it.

8 Did you see Dr. Napoli ten times between
9 July 22, 1972 and August 25, 1972?

10 A I did not.

11 MR. BLOCH: No further questions.

12 CROSS-EXAMINATION

13 BY MR. WEISENFELD:

14 Q Mrs. Rivera, you stated that sometime in
15 1972 you lost your Medicaid card?

16 A Yes, sir.

17 Q Do you know exactly when you lost your card?

18 A No, I do not.

19 Q In 1972 how many visits would you approximate
20 that you made to the Lee Avenue Clinic?

21 A For my entire family or for myself?

22 Q For you.

23 A For myself, when I saw different doctors, - - -
24 I would say many times I visited there.

25 Q Do you have any recollection of the number of

1 eor6

Rivera-cross

2 times that you visited the Lee Avenue Clinic in 1972

3 other than saying it was a lot of times?

4 A No.

5 Q Do you remember specifically how many
6 times you saw any particular doctor?

7 A Well, yes. I would say my regular doctor
8 I was seeing maybe once or twice a week and the gyn
9 doctor I was seeing regularly.

10 Q Other than seeing the regular doctor, do you
11 know approximately how many times you saw them?

12 A Like I said before, only the chiropractor
13 I would know exactly how many times I saw because you
14 didn't go much to them.

15 Q Did you ever lend your Medicaid card to anybody
16 to use?

17 A Never.

18 Q Never to a family member who wasn't on the
19 Medicaid program?

20 A No.

21 Q Did you ever see that done in your family?

22 A Excuse me?

23 Q Your card is used by your children, isn't --
24 it?

25 A Yes.

1 ecr7 Rivera-cross

2 Q Did you always go with your children to the
3 Medicaid center?

4 A Sometimes I did and sometimes I did not.

5 Q Do you know if they ever loaned your card to
6 anybody?

7 A No.

8 Q But you let them go to the clinic by them-
9 selves?

10 A No, never. I would take them with me.
11 If I went by myself, I would leave them with a babysitter,
12 but I would never send them alone.

13 Q You went every time?

14 A Yes.

15 Q Your daughter Cynthia, how many times did
16 she go to the clinic on Lee Avenue in 1972?

17 A I took her for vaccinations, exactly how
18 many times I can't say. I do not remember.

19 Q You stated that you remember the name
20 Napoli?

21 A Yes.

22 Q Did you remember the name Napoli before you
23 were contacted by the government?

24 A Yes.

25 Q Do you remember this name for four and a half

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Rivera-cross

2 years?

3 A The name Napoli, yes. Just like I remember
4 a few other doctor's names.

5 Q Did you have any opportunity before the
6 government contacted you, did you have any occasion, did
7 anybody ask you anything about Dr. Napoli before that?

8 A No.

9 MR. WEISENFELD: I have no further questions
10 of this witness.

11 MR. BLOCH: No redirect, your Honor.

12 THE COURT: You are excused.

13 (Witness excused)

14 MR. BLOCH: The government calls Rena
15 Morey.

16 Your Honor, at this time I will put on the
17 record the stipulation agreed to between Mr. Weisenfeld
18 and myself.

19
20 R E N A M O R E Y , called as a witness
21 by the government, being first duly sworn,
22 testified as follows:

23 MR. BLOCH: Before examining this witness -
24 I will --

25 THE COURT: Let's go.

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Morey

MR. BLOCH: It is stipulated between counsel for the defendant and myself for the government that on or about January 16, 1975 Anthony Napoli took an oath before the grand jury of the United States, the December '74 additional grand jury, which was impaneled and sworn in the United States District Court for the Southern District of New York, and that grand jury was investigating violations of Medicaid and that it was material to the Medicaid investigation being conducted by the grand jury to ascertain whether defendant had ever submitted or caused to be submitted false claims and statements under Medicaid or had conspired to do so; that during that grand jury session Dr. Napoli testified:

"Q Dr. Napoli, did you ever submit a fictitious invoice in the sense that you either billed for a patient you had not seen or billed in excess of the number of visits you actually administered?

"A No, I have not."

DIRECT EXAMINATION

BY MR. BLOCH:

Q Mrs. Morey, by whom are you employed?

A The Department of Health, Education and Welfare.

THE COURT: Keep your voice up, please.

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Q In what capacity?

A Claims representative trainee.

Q How long have you been doing that?

A Since February 28 of this year.

Q Prior to that what was your employment?

A I was still employed with the Department of Health, Education and Welfare. I was an investigator.

Q Were you working out of the U. S. Attorney's office?

A Yes, I was.

Q Did there come a time when you became involved in an investigation of the invoices of Dr. Anthony Napoli?

A Yes.

Q When was that?

A That was approximately December of last year.

Q In connection with that investigation did you contact patients with respect to Dr. Napoli's invoices?

A Yes, I did.

Q How many people did you contact?

MR. WEISENFELD: Your Honor, may we have an offer of proof as to this so that we know the jury may not be hearing things that are not properly in this case?

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Morey-direct

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THE COURT: So far they haven't heard anything. Let's cross the bridge when we come to it.

Q How many people did you contact?

A I spoke with approximately 45.

Q What period of time did the investigation cover?

A There are a few from very late December of '71 and the rest went into --

MR. WEISENFELD: I object to the whole line of inquiry. I don't see any relevance at this time.

THE COURT: Overruled at this time. Proceed.

A Early fall of 1972.

Q The 45 patients you contacted, did that include the patients named in this indictment?

A Yes.

Q For what reason did you not interview more than 45?

MR. WEISENFELD: I object.

THE COURT: Overruled. You made the point in your opening statement.

A I felt I had an adequate number of witnesses and also my appointment as an investigator would have ended in February so I did not have time to contact more.

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Morey-direct

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1 eor12
2 Q Of the 45 people, how many confirmed the
3 number of visits that they saw Dr. Napoli?

4 MR. WEISENFELD: Objection.

5 THE COURT: Could I have the question read.

6 (Question read)

7 THE COURT: Sustained.

8 Q Have you conducted similar investigations
9 with respect to other doctors?

10 A Yes, I have.

11 MR. WEISENFELD: Objection, your Honor.

12 THE COURT: Sustained. Strike it.

13 MR. BLOCH: No further questions.

14 MR. WEISENFELD: I have no questions of
15 the witness.

16 THE COURT: You are excused.

17 (Witness excused)

18 THE COURT: Next witness.

19 MR. BLOCH: At this point the government
20 rests, your Honor.

21 THE COURT: All right, I will hear at
22 the side bar.

23 (At the side bar)

24 THE COURT: Just make the pro forma motions.

25 MR. WEISENFELD: Rule 29, we move for a

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directed verdict of acquittal that the evidence is insufficient to go to the jury.

THE COURT: Are there any counts where you have failed to prove them?

MR. BLOCH: Not one other than the five I indicated prior to the trial.

THE COURT: Other than those, all right.

Motion denied.

MR. BLOCH: I think it should be on the record now that your Honor's chambers called this morning and asked whether I would elect not to proceed with certain counts and I elected not to proceed with counts 1 through 20, the false claims counts.

THE COURT: Yes, I had my chambers call you because I felt that they were duplicative and overlapping and you ought to elect between one group or the other and you elected under the thousand and one group.

MR. WEISENFELD: I have been so informed.

(In open court)

THE COURT: Proceed, Mr. Weisenfeld.

MR. WEISENFELD: At this time I would like to call Dr. Napoli to the stand.

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1
2 ANTHONY NAPOLI, called as a
3 witness in his own behalf, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WEISENFELD:

7 Q Dr. Napoli, how old are you?

8 A 46.

9 Q Where do you presently live?

10 A 611 Lamoka Avenue, Staten Island.

11 Q How long have you lived there?

12 A Four years now.

13 Q Are you married?

14 A Yes, I am.

15 Q Do you have any children?

16 A Yes, I have two children.

17 Q How old are they?

18 A Boy 17 and a girl 14.
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1 mmh 1 Napoli-direct

T3 2 Q You are a chiropractor by profession?

3 A Yes, sir.

4 Q Tell us something about your educational
5 background? When you became a chiropractor and where
6 you worked.

7 A Prior to becoming a chiropractor?

8 Q Yes.

9 A I worked my way through a record industry
10 distributor paying my way towards my tuition for college.
11 I graduated the Chiropractic Institute of New York in 1963,
12 January, 1963.

13 Q What did you do after you graduated?

14 A I went into private practice. I practiced
15 part-time, because I needed income to continue working
16 to support the family while I tried to build a practice.
17 I was in private practice approximately 1964, early part
18 of 1964, and as I said, I practiced part-time while I
19 maintained a job to provide a living for my family. After
20 that, it was summer in 1971, where I went into a Medicaid
21 practice in order to supplement my income.

22 Q Did there come a time when you began to work in
23 a clinic, the Lee Avenue Clinic?

24 A Yes.

25 Q That was in 1971 when you began to work there?

1 mmh 2 Napoli-direct

2 A No, in 1972 I started working at the Lee Avenue
3 Clinic.

4 Q And in 1972 approximately how many patients
5 were you treating during the course of the year, different
6 patients in 1972?

7 A I would say anywhere from 1,500 to 2,00.

8 Q About how many per day would that be?

9 A Approximately 35, 40 per day.

10 Q When you treated somebody for a chiropractic
11 ailment, what would your procedure be when a patient came in?

12 A When a patient came in he or she was questioned
13 as to what the problem was.

14 Q And did you take any data from them at that time?

15 A Yes, their complaint, their name, their age--
16 the data that was on the Medicaid card.

17 Q Did you take any physical description of the
18 person?

19 A No.

20 Q About how long did this information process taken?

21 A Anywhere from five to eight minutes.

22 Q Then you would give some kind of treatment
23 or adjustment?

24 A Yes.

25 Q How long did the adjustment or treatment take?

1 mmh3 Napoli-direct

2 A The adjustment or treatment was no more than
3 three minutes or two at the most.

4 Q How long would a second visit usually take,
5 not a visit where you took any information?

6 A A visit would take two minutes at the most.

7 Q Now, did it ever come to your attention that
8 people were coming to you using Medicaid cards that
9 belonged to someone else?

10 A Yes, many times people would approach me with
11 a card saying it is not for them, but it is a relative
12 or friend, and he or she did not have one, but I could
13 use that, and I would reject it when I was told that. They
14 would get indignant sometimes.

15 MR. BLOCH: I object to that.

16 THE COURT: Yes, strike the latter part out.

17 Q Have you subsequently come into information
18 that this is a widespread practice?

19 MR. BLOCH: Objection.

20 THE COURT: Sustained.

21 Q Has it ever come to your personal attention
22 that a patient of yours has used a Medicaid card that
23 didn't belong to them?

24 MR. BLOCH: Objection.

25 THE COURT: Sustained.

1 mmh4 Napoli-direct

2 Q If somebody was using somebody else's Medicaid
3 card would you be able to tell that from any of the
4 information on the card or your records?

5 MR. BLOCH: Objection.

6 THE COURT: You can ask the question whether
7 there is identifying picture on the card.

8 MR. BLOCH: The government would stipulate there
9 is no identifying picture.

10 Q So you are aware of no way that you can identify
11 the user of a Medicaid card?

12 A That is right.

13 Q Dr. Napoli, during the course of your being
14 a Chiropractor at the Lee Avenue Clinic, during this trial
15 you saw certain logbooks that were kept at the desk?

16 A Yes.

17 Q What patients were logged in that book? Were
18 any chiropractic patients logged in there?

19 A No, sir, only the medical patients.

20 Q As far as the patients you saw, who kept those
21 records?

22 A Whatever records I kept of the patients that
23 came to me. There were no other records, except mine. - /

24 Q Before you worked at the Lee Avenue Clinic
25 you worked at the Galli Clinic for a while?

1 mmh.5 Napoli-direct

2 A Yes.

3 Q What were your records in 1972 at Lee Avenue?
4 What types of records did you keep?

5 A Case history, the particular treatment involved,
6 the amount of visits the patient would get.

7 Q What type of document was that information
8 kept on?

9 A It was on an 8 x 9 card.

10 Q Would you call that a treatment card?

11 A Yes, you could refer to it as a treatment plan
12 that was sent to the city as well.

13 Q Did anybody keep those records, other than you?

14 A No, sir.

15 Q Did there come a time in 1972 when you were
16 contacted by the government pertaining to some of these
17 records?

18 A Yes.

19 Q What did you do with respect to these records
20 at the time the government contacted you in 1972?

21 A He asked to pass over whatever I might have had,
22 and I did so.

23 Q Was a subpoena issued for those records?

24 A No.

25 Q You turned those records over?

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Napoli-direct

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A Yes.

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Q Were they ever returned to you?

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A Yes.

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Q In 1957 were you contacted again by the government?

7

A Yes, I was.

8

Q What was that about?

9

A I was asked to come down and if I would appear as a witness on a grand jury.

11

Q Were you subpoenaed to come to the grand jury?

12

A No, I was not.

13

Q Did you contact a lawyer?

14

A No, I didn't.

15

Q Did you appear in the grand jury?

16

A Yes, I did.

17

Q In the grand jury were you informed that you were a possible target for the investigation?

19

A Yes, I was.

20

Q Did they inform you also you didn't have to testify if you didn't want to?

22

A Yes, they did.

23

Q Did you ask for immunity?

24

A No, I did not.

25

Q Did you have a lawyer present when you went

1 mmh.7 Napoli-direct

2 to the grand jury?

3 A No, I did not.

4 Q Did you answer the questions that were asked
5 of you in the grand jury?

6 A Yes, I did.

7 Q Did you answer them honestly?

8 A Yes, I did.

9 Q Each and every question?

10 A Yes.

11 Q Later in 1975 did you have a discussion with
12 Assistant United States Attorney Rossi?

13 A Yes.

14 Q Did he request anything further from you?

15 A Yes, further records of mine.

16 Q Did you turn those records over to him?

17 A Yes.

18 Q Were they subpoenaed?

19 A No, they were not.

20 Q Now, let's get back to your particular records,
21 your records that you kept. Explain the process of keeping
22 a treatment card record when a patient came in.

23 A Once a case history was made and the treatments
24 would be started to be given of these patients, it would
25 be noted on the card, on the paper, the amount of times and

1 mmh6 Napoli-direct

2 the treatments, and the papers were held aside and brought
3 to my home, because there was no way of keeping them there.

4 Q Now, to the best of your recollection were
5 these records that you kept accurate?

6 A Yes, they were to the best of my ability.

7 Q Did they reflect only treatments that you gave?

8 A Yes.

9 Q Did you ever intentionally put down any treatment
10 for any patient whatsoever who you knew you had not seen?

11 A No, sir.

12 Q Did sometimes come in to you for chiropractic
13 treatment who did not have any specific complaints?

14 A Yes.

15 Q What would you do with a person like that?

16 A Tell them there was no need for that and send
17 them out.

18 Q Did many of your invoices and treatment cards
19 reflect one and two treatment patients?

20 A Yes.

21 Q Now, describe some of the types of treatment
22 that you gave the people who came in, because we have had
23 some testimony about the nature of treatments that were --
24 given to various people.

25 A It dealt only with the spinal column, the neck,

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Napoli-direct

2 the mid-dorsals, or the lower spine, depending on what
3 the complaint was, it was that region that was cared for
4 at the particular time.

5 Q Did you ever use a machine?

6 A I had a hand vibrator, yes.

7 Q What was that used for?

8 A After an adjustment, sometimes there is a slight
9 sting. In order to relieve that, the vibrator was used
10 to relax the muscle tissues.

11 Q Are you still on the Medicaid program?

12 A No, I am not.

13 Q Did you during the time the time you worked
14 under the Medicaid program at the Lee Avenue Clinic treat
15 anybody who was pregnant?

16 A Yes, I did.

17 Q Would you describe how you treated people who
18 were pregnant during the treatment?

19 A People who were pregnant were never lain down
20 as such on their abdomen, so they were treated sitting up,
21 and also a machine was used at this point to relieve
22 the area.

23 Q Was there any problem about treating people who
24 were present?

25 A No.

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Napoli-direct

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Q People who are pregnant can be treated right up to the very end?

A Yes.

Q It does not cause any discomfort?

A No, sir.

Q You heard testimony or saw an exhibit from Lynette Brown. She was in the hospital having an abortion on a day that you billed. Will you explain that?

A It was an apparent error on my part.

Q Was it an intentional error?

A Of course not.

Q In 1972 what was your gross income approximately?

A 1972?

Q Yes.

A Approximately 22,000, 23,000.

Q That was your gross income before deductions?

A Yes, sir.

Q And basically is your income in the same range now?

A Yes.

Q Has it been so for the last four or five years?

A Yes.

Q Dr. Napoli, I ask you one more time, did you at any time knowingly and intentionally bill for treatments that you did not perform on patients?

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A Not knowingly or intentionally, no, sir.

MR. BLOCH: Objection.

THE COURT: Overruled.

MR. WEISENFELD: I have no further questions.

THE COURT: I don't recall any questions concerning
the third count. Was that inadvertent?

MR. WEISENFELD: Concerning the grand jury
testimony? I did, but I will inquire again.

BY MR. WEISENFELD:

Q You did appear before a grand jury?

A Yes, I did.

Q And you did answer questions under oath?

A Yes.

Q You knew you were under oath?

A Yes.

Q Did you answer any of those questions falsely?

A No, I did not.

Q Did you answer every question in the grand jury
as accurately as you could to the best of your ability?

A Yes, I did.

Q And have you read your grand jury testimony
again in preparation for this trial?

A Yes, I did.

Q And rereading it, do you feel that there is any

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Napoli-direct
cross

211

question there that was answered dishonestly?

A No.

Q You stand by the accuracy of your answers in the grand jury?

A Yes, I do.

MR. WEISENFELD: I have no further questions.

CROSS-EXAMINATION

BY MR. BLOCH:

Q Dr. Napoli, do you have the patient records for any of the patients in this indictment?

A Do I have records?

Q Yes.

A No, sir, I don't.

Q Is it a fact that the only records that were returned to you from the United States Attorney's office was a logbook of 1971?

A That was returned to me, yes.

Q The United States Attorney's office kept the medical records you submitted?

A Yes.

Q Your counsel has had an opportunity to look through those records?

A I assume he has.

Q When in 1972 did you begin work at Lee Avenue?

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Napoli-cross

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A It had to be, I remember, the early part of 1972.

Q About January, 1972?

A I cannot remember exactly.

Q It was not December, 1971?

A No, it was not 1971; it was the early part of 1972.

Q And it was not November, 1971, certainly?

A I can't recall for sure.

Q July, 1971?

A For Lee Avenue?

Q Yes.

A I can't recall for sure.

Q Wasn't it your testimony that it was early 1972?

A That is what it was. I can't recall. I did not
look at the testimony recently.

Q Well, did you testify in the grand jury that
you started in Lee Avenue in early 1972?

A Yes. So then it was early 1972.

MR. BLOCH: May this batch of invoices be marked
Government's Exhibit 25.

Q I show you Grand Jury Exhibit No. 25 for identifi-
cation and ask you if your signature appears on these
invoices.

(Pause)

A Yes, they appear to be all mine, with the

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Napoli-cross

214

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2 A Again, I can't be precise on recalling what days--
3 either Monday, Wednesday or Saturday, or Tuesday, Thursday
4 and Saturday. I can't recall specifically. It is five or
5 six years ago.

6 THE COURT: You don't know whether you worked
7 Monday, Wednesday or Saturday or Tuesday, Thursday and
8 Saturday because it is five years ago?

9 THE WITNESS: No, I am saying I worked on Monday,
10 Wednesday and Saturday or Tuesday, Thursday and Saturday,
11 because on the other days I worked in private practice.
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2 exception of one.

3 Q Which invoice?

4 A This one.

5 MR. BLOCH: For the record that is invoice R968466.
6 With counsel's permission I will remove it from this
7 batch.

8 MR. WEISENFELD: May I see it?

9 MR. BLOCH: The government offers Government's
10 Exhibit 25 for identification in evidence.

11 MR. WEISENFELD: No objection.

12 THE COURT: It will be received.

xx 13 (Government's Exhibit 25 received in evidence.)

14 Q Did you have an opportunity to examine these
15 invoices, Dr. Napoli?

16 A Prior to now?

17 Q Just now.

18 A Yes.

19 Q Isn't it a fact you were billing from the Lee
20 Avenue address as early as April 10, 1971?

21 A If it is the date, then it is so. I could not
22 accurately say what time I started to work at Lee Avenue.

23 Q How many days a week did you work at Lee Avenue?

24 A Three days a week.

25 Q What three days a week did you work?

Q You are sure you worked only three days a week in your clinic?

A Yes.

Q And those are the same three days week after week?

A Yes.

Q You said you worked the other three days in your own private office, is that correct?

A Yes.

Q Did you work on mostly Medicaid patients or non-Medicaid patients?

THE COURT: Which place?

Q At your private office.

A Private patients.

Q Did you earn approximately as much in your private patient practice as you did in your Medicaid practice?

A No, the time was less, I believe.

Q Approximately maybe two-thirds as much as your Medicaid earnings?

A I worked there three days as well.

Q I am not asking you the amount of time. I am asking you whether the percentage of your income was approximately two-thirds.

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Napoli-cross

216

1 A No, my private practice was much less.

2 Q Was it half the amount?

3 A No, less than that, sir.

4 Q Was it about a third? You worked the same
5 amount of time for one-third of the income?

6 A No, it was less time. The income was
7 about -- for a given year would be maybe 3000, 4000, as I
8 can recall.

9 Q \$3000 or \$4000?

10 A Yes.

11 MR. BLOCH: I apologize to the Court.

12 (Pause)

13 MR. BLOCH: May this be marked Government's
14 Exhibit 26 for identification.

15 (Government's Exhibit 26 was marked for
16 identification)

17 MR. WEISENFELD: Could I see it?

18 Q How much money did you make from your
19 Medicaid earnings in 1972?

20 A I believe it was 19 or 22, I can't recall
21 exactly, sir.

22 Q Did you receive a form from the city giving
23 you the total amount of your billings for the year?

24 A Yes.

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Napoli-cross

217

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2 Q I show you Government Exhibit 26 for
3 identification. Does this appear to be a copy of that
4 form?

5 A Yes, 27.

6 MR. BLOCH: The government offers Govern-
7 ment Exhibit 26 for identification into evidence.

8 MR. WEISENFELD: I have no objection.

9 THE COURT: Received.

10 (Government's Exhibit 26 was received in
11 evidence)

12 Q Your gross earnings from Medicaid in 1972
13 was \$27,457.20, isn't that correct?

14 A Yes.

15 Q You earned \$3000 or \$4000 from your private
16 practice?

17 A As I recollect, sir, yes.

18 Q How much money did you bill for your gross
19 earnings on your tax return?

20 A How much money -- beg pardon?

21 THE COURT: Mr. Bloch, when you walk back,
22 you talk to the back wall and not to the witness.
23 Face the witness and then maybe he can hear what you
24 are saying and maybe I can and maybe the jury can. You
25 know it might help in the presentation of your case.

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Napoli-cross

218

1 MR. BLOCH: Your Honor rightfully pointed
2
3 that out to me once before.

4 Q Do you recall filling out a tax return for
5 the year 1972?

6 A Yes.

7 Q Did you claim that your gross earnings from
8 your business was \$22,000?

9 A Did I state that on my income tax?

10 Q Yes. Didn't you testify on direct examination
11 that your gross income was \$22,000?

12 A As I recollected, yes.

13 Q Isn't that the amount you reported on your
14 tax return?

15 A It must have been that, sir. May I say
16 part of the --

17 MR. BLOCH: No.

18 May this be marked Government Exhibit 27
19 for identification.

20 (Government Exhibit 27 was marked for
21 identification)

22 MR. BLOCH: The government offers Govern-
23 ment Exhibit 27 for identification into evidence.

24 MR. WEISENFELD: No objection.

25 THE COURT: Received.

eor5

Napoli-cross-redirect

219

(Government Exhibit 27 was received in
evidence)

Q Isn't it a fact that you reported \$22,000
income in 1972, gross income from your practice?

A If this is what was stated, this is what I
claimed on the form.

Q That is what you claimed on your tax return.

A Whatever is there. I say I can't recall
exactly, I assumed it to be 22 or 23.

MR. BLOCH: No further questions.

REDIRECT EXAMINATION

BY MR. WEISENFELD:

Q Dr. Napoli, in 1972 did you factor?

A Yes, I did.

Q What does factoring of accounts mean?

A I would have to pay a factor 12 per cent
of my earnings in order for him to reimburse my monies
as quickly as he can.

Q In other words, to make current bills, out-
standing bills for Medicaid would be discounted and
somebody would give you that discounted amount?

A Yes.

Q Did there come a time on your tax returns
when you made an error on that fact?

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Napoli-redirect-recross

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1 eor6
2 A Yes.

3 Q Would you explain that?

4 A Yes, in 1971 I had made my tax return on what
5 the government had sent me, the slip. We found later
6 that the factor had claimed more monies had been given to
7 me. These were monies that were, apparently, not yet
8 received or given to the government so, therefore, the
9 following year it was approved.

10 Q In 1972 did you report the amount that
11 was paid to you by the factor or the amount that --

12 A By the factor.

13 MR. WEISENFELD: Thank you very much.

14 RECROSS EXAMINATION

15 BY MR. BLOCH:

16 Q I show you Government Exhibit 27 and ask
17 whether you filed on a cash basis or an accrual basis?
18 I will point it out specifically.

19 A Yes, sir, what is your question?

20 Q Did you report your income on a cash basis
21 or an accrual basis?

22 A From the city, it has to be on an accrual
23 basis.

24 Q On your federal tax return?

25 A On a cash basis. I don't understand, sir?

1 eor7
2 Q Didn't you deduct from the gross amount
3 that you claimed the amount of factoring cost as part
4 of your expenses?

5 A Yes, this was done by my accountant.

6 Q It was deducted from the gross amount,
7 isn't that correct?

8 A No.

9 Q I call your attention to line K that says
10 "Medical factor costs and administrative costs."

11 Isn't that a deduction that you took from
12 your gross amount of business?

13 A This was -- he took this off the gross.

14 THE COURT: It is your return and not your
15 accountant's. Was there a deduction on there for
16 factoring costs?

17 THE WITNESS: Yes, but it was taken off only
18 once.

19 Q What is the percentage of factoring you
20 pay?

21 A To the factor?

22 Q Yes.

23 A 12 per cent.

24 MR. BLOCH: No further questions.

25 MR. WEISENFELD: I have no further questions.

1 eor8

2 THE COURT: You are excused.

3 (Witness excused)

4 THE COURT: Proceed.

5 MR. WEISENFELD: Your Honor, may I have a
6 minute. I have some character witnesses I would like
7 to call.

8 (Pause)

9 MR. WEISENFELD: Mr. Walter Burgess.

10
11 W A L T E R B U R G E S S , called as a
12 witness by the defendant, being first duly
13 sworn, and stating his address as 25 Hallister
14 Street, Staten Island, New York, testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. WEISENFELD:

18 Q Mr. Burgess, what do you do for a living
19 right now?

20 A I am a retired New York City policeman.

21 Q How lon- were you with the New York City
22 police force?

23 A 24 years.

24 Q You live on Staten Island?

25 A Yes, sir.

eor9

Burgess-direct

223

1 Q While you have lived on Staten Island,
2
3 have you had any contact with Tony Napoli and his
4 family?

5 A Yes, sir, I have.

6 Q Would you describe very briefly in your
7 own terms how you have gotten to know Mr. Napoli?

8 A Well two years ago the city was going to
9 put in an amusement park in Staten Island --

10 MR. BLOCH: Objection, your Honor.

11 THE COURT: Overruled.

12 A The city was going to put in an amusement
13 park in Staten Island and the location where they were
14 going to put it, it happened to be in our community,
15 and a group of us formed what we called an ad hoc
16 committee to fight the amusement park. Dr. Napoli and
17 his wife, who happened to be the president of her civic
18 association, came forward and gave us moral support
19 and financial support and that is how I came to meet them
20 and know Dr. Napoli and his family.

21 MR. BLOCH: Object to the testimony, your
22 Honor.

23 - THE COURT: Overruled.

24 Q During the last two years you have gotten
25 to know Dr. Napoli?

eor10

Burgess-direct

224

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A Yes, I have.

Q Have you formulated an opinion as to his veracity, honesty, truthfulness and character?

A Yes, sir, I have.

Q What is your opinion as to his character?

A In my honest opinion, his integrity is beyond reproach.

Q During the course that you have known him, have you had the opportunity to discuss Dr. Napoli's reputation for honesty with other members of the community?

A Yes, sir, I have.

Q Have you formed -- what is Dr. Napoli's reputation for honesty and veracity in the community that you know?

A As I say, counselor, his integrity is beyond question.

Q Does the fact that Dr. Napoli has been charged here with a Medicaid fraud case, does that change your opinion as to his honesty and integrity in any way?

A No, sir.

MR. WEISENFELD: I have no further questions.

ecrll

Burgess-cross

225

CROSS-EXAMINATION

BY MR. BLOCH:

Q You testified that you have known Dr. Napoli for two years, is that correct?

A Approximately two years, counsel.

Q So you don't know anything about Dr. Napoli's behavior in 1972?

A No, sir.

Q You don't know anything about his business at either the Lee Avenue Medical Center --

A No, sir.

Q So your knowledge of his reputation is in the community of Staten Island?

A Yes, sir.

MR. BLOCH: No further questions.

THE COURT: You are excused.

THE WITNESS: Thank you.

(Witness excused)

MR. WEISENFELD: Mr. Robert Ferrante.

ANTHONY ROBERT FERRANTE,
called as a witness by the defendant, being
first duly sworn, testified as follows:

eor12

Ferrante-direct

226

DIRECT EXAMINATION

BY MR. WEISENFELD:

Q What is your occupation?

A I am a mechanical engineer.

Q Did you work for Arlen Realty for ten years?

A Yes, I worked for Arlen Realty for about 20 years up until about five months ago.

Q Are you married?

A Yes, I am.

Q Do you have any children?

A I have two children.

Q You live in Staten Island, is that correct?

A Yes, I do.

Q During the time that you lived in Staten Island, have you gotten to know Dr. Napoli and his family?

A Yes, I have.

Q In what context, very briefly, do you know the family?

A Well, I would say very much what the previous witness described, I am the president of the South Gate Civic Association on Staten Island and working through the civic organizations a number of years ago we had the opportunity to meet Dr. Napoli and his wife.

eor13

Ferrante-direct

227

1 In the same manner, as I said, the previous witness
2 described. We worked with them and have on occasion
3 socialized with them as well as other members of the
4 civic groups that we deal with on Staten Island in
5 opposing some of the projects that we feel objectionable.
6

7 Q Mr. Ferrante, during the time that you have
8 known Dr. Napoli -- by the way, how long has that been?

9 A I would say about two and a half years.

10 Q During the two and a half years that you
11 have known him, have you formed an opinion as to Dr.
12 Napoli's character for honesty and truthfulness?

13 A Yes, I have.

14 Q What is your opinion as to his character?

15 A Well, I feel that based upon Dr. Napoli's
16 work in the civic areas and what he has said to us,
17 his concern for the people in the community and just
18 people in general, he has always shown to me to be the type
19 of individual that has the very highest regard for
20 honesty and integrity.

21 Q Have you had the opportunity to discuss
22 Dr. Napoli's reputation for honesty and integrity
23 with any other members of the community in which you
24 live?

25 A Yes, we have. We haven't made a point of

eor14

Ferrante-direct

228

1 discussing a person's honesty and integrity. However,
2 it is something that you just feel and if everybody
3 feels it, you work well together and that is the situation
4 that has occurred with Dr. Napoli, as well as many other
5 people in the borough.
6

7 Q What is Dr. Napoli's reputation in the
8 community for honesty and truthfulness?

9 A There is no question that he is very
10 highly regarded in the borough by people throughout
11 the civic organizations in general who have seen the
12 type of work that he and his group did on the civic
13 matters in the past three years that I have known him.

14 Q You understand that Dr. Napoli has been
15 charged with a crime that is alleged to have been
16 committed in 1972. Do you understand that?

17 A Yes, I do.

18 Q You didn't know Dr. Napoli in 1972, is that
19 true?

20 A No, I did not.

21 Q Does the fact of the charge or the fact that
22 you did not know him in 1972 in any way alter your opinion
23 as to his character?

24 A No, it certainly would not.

25 MR. WEISENFELD: Thank you.

eor15

Ferrante-cross

229

CROSS-EXAMINATION

BY MR. BLOCH:

Q Do you know anything about the business of Dr. Napoli?

A I do know, you know, that he is a doctor and I have heard somewhat of the situation of the case which gives me an idea of the type of situation that has occurred. I am not totally familiar with his practice, no.

Q Were you in court just now?

A Yes, I was.

Q Have you heard that Dr. Napoli claimed \$22,000 gross receipts when, in fact, he earned \$31,000 gross receipts; did you hear that?

A I heard that statements to that effect were made, yes.

Q Would that change your opinion as to his character and integrity?

A Not just on the basis of somebody saying it, no.

MR. BLOCH: No further questions.

(Witness excused)

MR. BLOCH: Your Honor, at this time I would ask that the rest of the character witnesses be

1 eor16

2 excluded from the courtroom.

3 MR. WEISENFELD: I have no objection.

4 THE COURT: I don't see any reason for that.

5 E L O I S E W E I S E N B E R G , called as
6 a witness by the defendant, being first duly
7 sworn, testified as follows:
8

9 DIRECT EXAMINATION

10 BY MR. WEISENFELD:

11 Q Miss Weisenberg, what do you do for a
12 living?

13 A I am executive secretary in F. W. Woolworth
14 Company executive offices.

15 Q How long have you been there?

16 A 21 years.

17 Q How do you know Dr. Napoli?

18 A I know him as a doctor that has treated
19 me for seven years.

20 Q During that period of time have you formed
21 an opinion of Dr. Napoli as to his character?

22 A Definitely. I find him above reproach.

23 Q Did there ever come a time when you have
24 spoken to other patients of Dr. Napoli?

25 A Yes, occasionally in the office in the

eor17

Weisenberg-direct-cross

231

1 waiting room and it seems to be a general consensus
2 of opinion.

3
4 Q In other words, in his practice as far as
5 your knowledge of his reputation, what is your knowledge
6 of his reputation in the practice of chiropractic?

7 A I would say everybody felt the same way
8 that I did. They valued his ability in treating them.
9 They thought highly of him. They recommended him to
10 other people and felt he was above reproach.

11 Q You have been seeing him since 1970?

12 A Correct.

13 MR. WEISENFELD: I have no further questions.

14 CROSS-EXAMINATION

15 BY MR. BLOCH:

16 Q Maybe I didn't understand. Are you the
17 secretary for Dr. Napoli?

18 A No, I work for the F. W. Woolworth Company.

19 Q Did you say something about being in his
20 office?

21 A No. I said I have gone to him for seven
22 years.

23 Q As a patient?

24 A Right.

25 Q Where did you go to him?

eor18

Weisenberg-cross

232

1
2 A To his office.

3 Q His private office?

4 A His private office, yes.

5 Q Do you know anything about his activities
6 with regard to Medicaid?

7 A No, sir.

8 MR. BLOCH: No further questions.

9 THE WITNESS: Thank you.

10 (Witness excused)

11
12 C L E M E N T I N E B A R D A S S I , called as a
13 witness by the defendant, being first duly
14 sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WEISENFELD:

17 Q Mrs. Bardassi, are you employed presently?

18 A Yes, I am.

19 Q What do you do for a living?

20 A I am a secretary and receptionist.

21 Q Is your husband employed?

22 A Self employed. He is a public accountant.

23 Q When did you first get to know Dr. Napoli?

24 A I would say about a year and a half, almost
25 two years.

eor19

Bardassi-direct

233

1
2 Q Was that as a patient?

3 A As a patient.

4 Q You have been going to him for about a year
5 and a half?

6 A I would say. I believe it will be about
7 two years in August. I am not sure.

8 Q During that time how many times have you
9 seen Dr. Napoli?

10 A Oh, I couldn't state that.

11 Q Enough that you have formed an opinion as
12 to his character?

13 A Absolutely, enough times for that.

14 Q What is your opinion as to his character?

15 A As far as I am concerned, he is the most
16 honest person I have ever come across in the medical
17 profession.

18 Q Have you had the opportunity to discuss
19 Dr. Napoli's reputation with any other patients of his?

20 A Well, we brought it up, what a wonderful
21 person and honest and sincere person.

22 Q What is his reputation?

23 A Extremely high.

24 Q You were in court when Dr. Napoli was asked
25 questions about his tax returns?

eor20

Bardassi-direct-cross

234

1 A Somewhat. I came in a little late.

2 Q You know that he has this charge pending
3 against him?

4 A I do.

5 Q Do either of those facts detract from your
6 opinion and his character in any way?

7 A None whatsoever.

8 Q Would it change it in any way?

9 A None whatsoever.

10 MR. WEISENFELD: Thank you very much.

11 CROSS-EXAMINATION

12 BY MR. BLOCH:

13 Q If someone understates his income by
14 \$9000, that would not change your opinion --

15 A I am sorry, I came in a little late and I
16 was not aware of what went on.

17 Q I am asking you if you heard that someone
18 understated their gross income by \$9000 on their tax
19 return, would that influence your judgment as to their
20 truth or veracity?

21 A Not as far as the way I feel about him
22 personally, no.

23 MR. BLOCH: You are excused.

24 (Witness excused)

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235

1
2 G L O R I A M I L O N E , called as a witness
3 by the defendant, being first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. WEISENFELD:

7 Q Mrs. Milone, you are married, aren't you?

8 A Yes, I am.

9 Q Do you have any children?

10 A Four.

11 Q What does your husband do for a living?

12 A He owns a cocktail lounge.

13 Q Are you employed?

14 A No, I am a housewife.

15 Q How long have you known Dr. Napoli?

16 A Seven years.

17 Q How have you known him?

18 A He has been my doctor.

19 Q During the seven years that you have been
20 going to him, have you formed an opinion as to his
21 integrity in the profession?

22 A I think of him very, very highly.

23 Q Have you had an opportunity when you have
24 gone to his office or any other time to discuss his
25 reputation and character with any of the other patients

eor22

Milone-direct-cross

236

1 in the office?

2
3 A Yes. As a matter of fact, I have referred
4 many people to him and I have brought my own son to
5 him.

6 Q What is the reputation, what is Dr. Napoli's
7 reputation and character, the opinion of his patients
8 as to his reputation and character?

9 Q The same as mine. As a matter of fact, one
10 of my tenants had an operation --

11 Q Were you in court during the questioning
12 on the income tax?

13 A I think I heard part of it.

14 Q Would it change your opinion of Dr. Napoli --

15 A None whatsoever.

16 Q Would it change your opinion in any way
17 that he is charged with this crime?

18 A No.

19 MR. WEISENFELD: I have no further questions.

20 CROSS-EXAMINATION

21 BY MR. BLOCH:

22 Q You were treated in his private office, is
23 that correct?

24 A Yes.

25 Q Do you have any knowledge whatsoever of the

eor23

Milone-cross

237

Medicaid clinics with which he has worked?

A Well, on a couple of occasions I called there to make an appointment in his private office when I was feeling very ill. In other words, I knew he was working there.

Q Other than that you know nothing else?

A No.

Q Is it your testimony under oath that if you knew a person understated their gross income by \$9000, that would not change your opinion as to their truth or veracity?

A No, it would not.

MR. BLOCH: No further questions.

(Witness excused)

V I N C E N T D E S A N T I S , called as a witness by the defendant, being first duly sworn, and stating his address as 7301 Tenth Avenue, Brooklyn, New York, testified as follows:

DIRECT EXAMINATION

BY MR. WEISENFELD:

Q Are you married, Mr. DeSantis?

A Yes.

Q Do you have any children?

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A Four.

Q What do you do for a living?

A I have a small retail store.

Q For how long have you known Dr. Napoli?

A Approximately three years.

Q What was your first contact with him?

A My first contact with him was, well, I was in severe pain, I had been through two medical doctors and a battery of treatments and x-rays. It was at night I can't remember exactly when, but I was desperate. I had heard of Dr. Napoli --

THE COURT: I think this is too much. You went to him as a patient.

Q You went to him as a patient?

A Yes.

Q How long did you go to him as a patient?

A Dr. Napoli had set treatment for five weeks, three times a week. He set a fee on it and I went for five weeks. I was much better, but he was not satisfied. He continued treatment for two more months.

mmhl

De Santis-direct
cross

T5 2 Q Mr. De Santis, during the period of time that
3 you have known Dr. Napoli, did you know him also outside
4 of his practice?

5 A Only heard of him in the neighborhood. I used
6 to live in the neighborhood he practiced in and moved out.

7 Q Did you form an opinion as to his honesty as
8 a patient of his?

9 A Yes.

10 Q What is that opinion?

11 A He is devoted to his work; I have a high regard
12 for the man.

13 Q Have you had discussions with other people
14 in the community about Dr. Napoli? About his reputation?

15 A Just what we have been hearing here, a good man;
16 he is well respected.

17 Q You have been in court during the cross-examination
18 of Dr. Napoli?

19 A Yes.

20 Q Has anything you heard here changed your opinion
21 about him?

22 A Definitely not.

23 MR. WEISENFELD: No further questions.

24 CROSS-EXAMINATION

25 BY MR. BLOCH:

1 mmh 2 De Santis-cross

2 Q Do you know anything about the billing practices
3 of Dr. Napoli?

4 A Billing practices? In what sense? No.

5 Q You don't know anything about the Galli Clinic?

6 A No.

7 Q Anything about the Lee Avenue Medical Clinic?

8 A No.

9 Q You know nothing about his employment environment?

10 A No.

11 Q You went to him three times a week as a patient
12 for five weeks?

13 A Yes.

14 Q On the 7th or 8th visit how much time did Dr.
15 Napoli spend treating you?

16 A Each visit?

17 Q Yes.

18 A Approximately an hour, sometimes a half.

19 MR. BLOCH: No further questions.

20 THE COURT: You are excused.

21 (Witness excused)

22 MR. WEISENFELD: I call Dr. Leonard Milovsky.

23 :
24 L E O N A R D M I L O V S K Y, a witness called on

25 behalf of the defendant, being first duly sworn, testified

mmh3

Milovsky-direct

as follows:

DIRECT EXAMINATION

BY MR. WEISENFELD:

Q Dr. Milovsky, you are a chiropractor?

A Yes, sir.

Q When were you licensed to practice?

A In 1961.

Q How long have you known Dr. Napoli?

A About five or six years.

Q Do you know him professionally and socially?

A Yes, sir.

Q During your professional relationship with him
did you form an opinion as to his character?

A Yes, sir.

Q What is that?

A He is completely honest, completely dedicated;
he is a beautiful father and good husband.

Q Did you have occasion to discuss Dr. Napoli
with other people in the community?

A Oh, sure, we have meetings constantly, and many
times Dr. Napoli's name was brought up, he is beyond reproach
as a human being and as a doctor.

Q Are you aware that Dr. Napoli treated Medicaid
patients?

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1 mm.h4 Milovsky-direct
cross
2 A He did at one time, yes, sir.
3 Q Were you here during the entire cross-examination?
4 A Yes, I was.
5 Q Was there anything that you heard that would
6 change your opinion?
7 A No, sir.
8 MR. WEISENFELD: I have no further questions.
9 CROSS-EXAMINATION
10 BY MR. BLOCH:
11 Q Did you actually work personally with Dr. Napoli
12 in his private office?
13 A No, I have been a patient of his and we have
14 been to each other's offices.
15 Q Have you been to his Medicaid clinics?
16 A No, sir.
17 Q Do you know the people who work at those Medicaid
18 clinics?
19 A No, I don't know them.
20 MR. BLOCH: No further questions.
21 THE COURT: You are excused.
22 (Witness excused)
23 MR. WEISENFELD: Your Honor, that is the last
24 of the character witnesses. The only thing that I would
25 offer now is all of those medical records of all the

307a

mmh5

1
2 government witnesses which have not been introduced in
3 evidence. I will offer them collectively as Defendant's
4 Exhibit K. I would ask that we use the government originals;
5 they are much easier to read than the copies that I have.

6 MR. BLOCH: They will be deemed marked. They
7 are scattered. He wants all the medical records, which
8 are this high (demonstrating) and nine books. They should
9 be deemed marked.

10 THE COURT: They will be deemed marked Defendant's
11 Exhibit K.

xx 12 (Defendant's Exhibit K in evidence deemed marked.)

13 MR. WEISENFELD: That is the defendant's case.

14 THE COURT: Do you rest?

15 MR. WEISENFELD: We rest.

16 THE COURT: The jury will take a short recess.

17 (Jury excused)

18 MR. WEISENFELD: At the end of the entire case,
19 I move for a directed verdict or for an acquittal.

20 THE COURT: Denied.

21 MR. WEISENFELD: Your Honor, I ordered daily
22 copy in this case, and there are some technical details
23 that came out on cross-examination which I don't have notes
24 on. Now, I have been given the first part of that daily
25 copy, and it does not relate to the witnesses that are

1 mmh6

2 important to me. I would ask to sum up at 2 o'clock.

3 THE COURT: We can't do that. We can't interrupt
4 this trial. This case isn't at all that complicated.
5 Many of them have been tried before me without daily
6 copy.

7 MR. WEISENFELD: Your Honor, there are specific
8 things that were said by specific witnesses.

9 THE COURT: Certainly, you can remember them if
10 they are that important and that specific. We are not
11 waiting for daily copy, no. We will take a few minutes'
12 recess for you to pull your thoughts together, and then
13 we are summing up.

14 MR. BLOCH: Your Honor, the government has a
15 very short rebuttal case.

16 THE COURT: Let's hear it.

17 MR. BLOCH: The government is going to offer
18 Government's Exhibit 28 for identification, a calendar
19 for the year 1972, which your Honor can take judicial
20 notice of.

21 THE COURT: I will take judicial notice in front
22 of the jury. Is it all that important?

23 MR. BLOCH: Your Honor, it is critical.

24 THE COURT: Bring the jury back.

25 . . (Jury in box)

1 mth7

2 MR. BLOCH: Your Honor, in rebuttal the government
3 offers Government's Exhibit 28 in evidence, the calendar
4 for the year 1972.

5 MR. WEISENFELD: No objection.

6 THE COURT: Received.

7 (Government's Exhibit 28 received in evidence.)

8 MR. BLOCH: The government now rests its rebuttal
9 case.

10 THE COURT: The jury may again take a recess.

11 (Jury excused)

12 THE COURT: For the record, Mr. Weisenfeld,
13 you should renew your motion.

14 MR. WEISENFELD: Yes, at the close of the rebuttal
15 case the defendant renews his motion under Rule 29 for
16 a directed verdict in this case.

17 THE COURT: Denied.

18 (Recess)

19 (Jury in box)

20 MR. BLOCH: May it please the Court, Judge MacMahon,
21 Mr. Weisenfeld, madam forelady, ladies and gentlemen of
22 the jury: at the outset I want to thank you for the
23 close attentiveness you have paid to this case. I notice
24 that you paid close attention, even though there were
25 the accents of the witnesses, sometime difficult to . . .

1 nurse

2 understand, and perhaps at times I did not speak up. This
3 has been a relatively short case and you have performed
4 an important public service.

5 At this time I will address my remarks to
6 what the government submits is the proof of guilt beyond
7 a reasonable doubt of this defendant on the charges before
8 you. The basic question you must answer in this case
9 is whether Dr. Napoli billed for visits that were never
10 made, for treatments that were never given as to each
11 of the counts in the indictment. As I told you in the
12 opening, each of the patients testified they did not see
13 the chiropractor nearly as many times as Dr. Napoli
14 billed for, and, as a consequence, the Medicaid system
15 was systematically cheated.

16 Let us talk about Roslyn Ero.-- I am now going
17 in the order of the indictment. She said she saw two chiro-
18 practors at the Lee Avenue Clinic, being referred by a
19 foot doctor. She saw one chiropractor two times and another
20 three times. She could not have possibly seen chiropractors
21 for a total of more than five times; yet she was billed
22 nine times by Dr. Napoli. She told you further that she
23 didn't have migraine headaches and never went to a chiro-
24 practor for migraine headaches. Dr. Napoli told you he
25 only performed work on the spine. Yet she is billed for

1 mm.h9

2 migraine. Look at this exhibit. Mrs. Ero said she had
3 only occasional headaches. Dr. Napoli billed her for
4 nine visits.

5 Miss Barrentes testified that she went to
6 a chiropractor at the Lee Avenue Clinic two times. Yet
7 Dr. Napoli billed her for eight visits in one month. That
8 is Government's Exhibit 2.

9 Then we have Barbara Tolliver, the one whose
10 house burned down. Dr. Napoli had X-rays taken of her
11 back. She had back massage. She told you in no uncertain
12 terms that she never went 12 times. Yet she is billed
13 by Dr. Napoli for 12 visits. She said she did not return
14 because she did not like the way it felt. She admits
15 seeing an allergist three times a week for quite a while,
16 but not Dr. Napoli three times a week, as he would have
17 you believe. That is Exhibit 3.

18 Sara Diaz's testimony was also very clear. She
19 went once to the doctor and then returned for X-rays.

20 Going back to Barbara Tolliver, you might have
21 wondered why I took the exercise of putting in a calendar
22 for 1972. Looking at nothing else but this exhibit,
23 compare the invoices to the calendar. You will notice
24 Barbara Tolliver is billed for Monday, Wednesday, Friday
25 and Saturday at Lee Avenue. Dr. Napoli testified on the

1 mth10

2 stand before you he only worked three days a week. You
3 will find as you go through these invoices patients
4 were billed for four days a week, Monday, Wednesday, Friday
5 and Saturday. I invite you to examine and compare this
6 calendar with these invoices and see if that is not
7 correct.

8 Sara Diaz's testimony was also very clear. She
9 went once to the doctor and then returned for X-rays.
10 She never intended to see a chiropractor. She didn't
11 bother to get the second X-ray and she never saw a chiro-
12 practor more than two times in her entire life.

13 Then there was Dorothy Lee with nine children,
14 who had had a heart attack, was sent to the chiropractor,
15 not of her own volition, but by the receptionist, and was
16 told she was one-sided. She was given another appointment,
17 but never returned, because her back wasn't bothering her.
18 She went only once, but Dr. Napoli billed her ten times
19 in one and a half months. And her back never bothered her.
20 That is Dorothy Lee. That is count number 6.

21 Then we have Louise Carey, the first witness,
22 and maybe we didn't get off to such a good start. Her
23 memory was not as good as Mr. Weisenfeld would like, but,
24 nevertheless, she went to Dr. Napoli after she had come
25 out of the hospital and had pain from an operation. She

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2 went three times, no more. Yet Dr. Napoli billed her for
3 ten visits in May and June.

4 Barbara Cunningham was one of the few witnesses
5 who ever went back to the chiropractor in this case other
6 than on Lee Avenue, but as to Lee Avenue, she did go
7 three times in 1972. She was scheduled for more visits.
8 But she never went back. She testified she was never there.
9 ten times Dr. Napoli billed her for.

10 Count 10 is Lynette Brown. She is Dr. Napoli's
11 most peculiar patient. She was sure she went to Dr.
12 Napoli once before she went into the hospital for an
13 abortion and to have her tubes tied. Dr. Napoli saw her
14 ten times, these bills say. He billed her for a visit
15 on June 5, 1972, but on that day she was actually being
16 operated upon in a hospital, and the record of the
17 hospital, the hospital records, Government's Exhibit 10A,
18 those records I read to you, those records show on the
19 very date she was billed she was in the hospital having
20 an operation. Oh, that is just a mistake. That is just
21 a mistake because we could prove that one without any
22 doubt in your mind, that that visit did not occur. So
23 even if you did not have another piece of evidence in the
24 entire case, there is that evidence. But we had 15 witnesses,
25 none of whom had any reason to lie, who appeared before

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2 you and told you time and again that they never saw Dr.
3 Napoli anywhere near the times they were said to have
4 visited him.

5 And you heard Miss Morey get up on the stand
6 and testify that number of people she contacted were 45,
7 and we have 15 out of the 45, one out of every three that
8 she contacted. She did not have time to do any more and
9 she did not feel the need to go any further, although
10 Mr. Weisenfeld says that there were more patients than
11 these. One out of three. Compare Government's Exhibit
12 10 and 10A and see whether or not Lynette Brown was in the
13 hospital on June 5th. If we were to forget the other
14 witnesses, it would still be crystal clear that Dr. Napoli
15 over-billed for her.

16 Lillie Smith was no angel. She candidly admitted
17 she used her Medicaid card illegally. She was not trying
18 to hide anything from you. In fact, a lot of these
19 witnesses said things that were not pleasant at all for
20 them to say; they mentioned the abortions that they had
21 had; they mentioned about having their tubes tied; one
22 witness, who didn't want to tell what her operation was,
23 said she had trouble with the uterus. They exposed all their
24 problems to you. One told about how her house burned down,
25 another about a heart attack. They did not hold back from

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the truth. I want you to think about this: Did they have any motive whatsoever to lie? Has any motive been shown whatsoever? Here is a witness who testified that she used the card illegally. She says she recalls that she went to the chiropractor two times. She did not intend to see a chiropractor. No wonder she did not go more than two times. In her whole life she says there were only two visits.

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2 And Della Gonzales was also sent to Dr.
3 Napoli by the receptionist. Think of all these people
4 sent by the rectptionist . This is not a case about
5 ping-ponging witnesses from one doctor to another.

6 Ladies and gentlemen, I think you can infer
7 from the fact that all these patients tell you how
8 they came to the doctor, they were sent by the receptionist,
9 sent by the foot doctor, sent by the gynecologist,
10 they were sent by everyone, they had no intent to see
11 a chiropractor. Of course, they wouldn't want to go
12 back for ten visits. Doesn't that make sense?

13 And Della Gonzales was told to come back
14 in three days. She did not go back because she
15 didn't like him. She told you that. Dr. Napoli
16 claims he saw her ten times.

17 With Lillie Smith, three of these visits
18 had nothing to do with Lee Avenue. She saw a
19 chiropractor three times. She remembered this time
20 as being about ten months after her son was born and that
21 would make it June 1972, the exact date that Dr. Napoli
22 billed her, but he billed her for ten visits and not
23 two visits.

24 Regina Smith saw Dr. Napoli one time. Dr.
25 Napoli massaged her back. He billed her for headaches,

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2 nine times, but he only operates on the spine. Just
3 before her baby was born, don't you think she would
4 have remembered seeing a chiropractor nine times during
5 the weeks of her pregnancy just before she had a child
6 born? Dr. Napoli, in fact, overbilled her too.

7 Anita Rivera you heard on the stand this
8 morning. There was no inference whatsoever in any way
9 attacking her memory. You saw, she simply stated
10 she saw the chiropractor two times and there was no way
11 that her memory was shaken in any way. No doubt about
12 her recollection. She was billed many more times than
13 that. That is Government Exhibit 16.

14 Jenny Gonzales told you she went not ten
15 times, but she went two times. The same pattern. See
16 a patient one or two times, bill them for ten times.

17 Margaret Jackson told you the first time she
18 went to a chiropractor she went for her back. Dr. Napoli
19 billed her for headaches 11 times. She went back one
20 more time and, remember, she stood in front of the mirror
21 and the doctor held her in front of the mirror and held
22 her head and told her her spine was crooked and she didn't
23 think her spine was crooked so she didn't go back. She
24 can remember that. There is no reason why she would
25 forget that.

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Ladies and gentlemen, each of these witnesses I submit to you has absolutely no motive to lie. I will admit that some of those witnesses don't remember the exact number of visits that they went to a particular doctor. If you were asked -- if you had nine children and you were asked how many times you took your children to a pediatrician in 1972, of course you wouldn't give an exact answer or a general medical practitioner, you wouldn't know.

A chiropractor is different. You heard how witness after witness told you they were lying on a couch. One witness told about her leg being brought back to her neck. Had massages.

Think back in your lives and ask the question, can you remember how many times you went to a chiropractor as opposed to how many times you went to some other doctor?

Ladies and gentlemen, I submit that you remember going to a chiropractor and certainly 15 people didn't all just mistake the number of visits. 15 people out of 45, 1 out of 3.

We are not saying here that Dr. Napoli wasn't an able physician. He might very well be an able physician. He may well be a respected figure in

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2 the Staten Island community. No reason to doubt the
3 word of those witnesses. Although I am surprised to
4 hear them say that when their opinion of the person's
5 character wouldn't change if they cheated on \$9000
6 worth of gross income. That I find just amazing. I
7 think they felt a loyalty for Dr. Napoli and perhaps
8 that is the reason they made those statements. None
9 of them had any idea about the billing of the medical
10 clinics for this. They have no idea how he operated
11 his own business.

12 Dr. Napoli told you that he made up medical
13 records for each of these patients.

14 You are literally swarmed over with medical
15 records in this case. The medical records you
16 don't have are the medical records of patients in this
17 indictment.

18 If he had seen those patients nine times
19 and if he had had a diary with nine times, you would
20 have seen those records. He admitted on cross-examination
21 that he turned over all the records to the U. S. Attorney's
22 office and those records weren't produced for you
23 before this trial.

24 Ladies and gentlemen, I think you can
25 infer from that that those records may well not have

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2 supported him and, even if they did, there is nothing
3 to say at that time he couldn't have made his
4 records match to his invoices anyway.

5 Finally, it is really a credibility
6 issue. 15 people who had no motive to lie whatsoever,
7 things just happened to Dr. Napoli. He just happens
8 to make a mistake and bills someone who happens to
9 be in the hospital. 15 witnesses just happen to
10 come here and testify. Whenever they were asked they
11 stated they were under no fear from the government.
12 They were not worried about their own cards in any way.

13 Dr. Napoli, did he tell you the truth on the
14 stand? I didn't take a long period of time because
15 I think you will see the points made very quickly. There
16 is no need to go into detail.

17 Dr. Napoli, who should know how many times
18 a week he worked, said he worked three times a week.
19 Compare the calendar and his diary and you will see
20 that he worked four times a week, not that he worked
21 four times a week, but that he billed four times a
22 week.

23 Dr. Napoli said he started working in January
24 of 1972, but Government Exhibit 25 is -- I won't count
25 them for you -- Government Exhibit 25, why did I introduce

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2 these invoices? Those invoices show billings from
3 Lee Avenue for 1971, from April 1971. Eight months
4 at least, seven or eight months at least before he was
5 ever working there. Does that make sense to you,
6 ladies and gentlemen?

7 Does it make sense to you that he admits he
8 received \$26,000 from the Medicaid program, \$27,000
9 from the Medicaid program? He admits he gets another
10 three or four thousand dollars from private patients,
11 that is a total of \$31,000, he reports on his tax return,
12 you can look at the tax return, \$22,000 gross income.
13 That is just another mistake that happened to Dr. Napoli.

14 This whole case is a mistake unless you
15 come to the common sense conclusion, ladies and gentlemen,
16 that those 15 witnesses were telling the truth and that
17 Dr. Napoli did falsely bill the government.

18 There is a final count, the count of perjury.
19 He testified in the grand jury that he never overbilled
20 for an excess number of patients. To find him guilty
21 on that count, you just have to believe one of those
22 15 people.

23 Believe that, ladies and gentlemen, and he
24 was guilty of perjury in the grand jury. The government
25 submits he testified falsely there and for the reason

1 I have told you, he testified falsely on the stand.

2
3 Therefore, ladies and gentlemen, I am sure
4 when you discuss this case and deliberate, as I know
5 you will do carefully, you will come back with an
6 interdict of guilty on each and every count.

7 THE COURT: Mr. Weisenfeld.

8 MR. WEISENFELD: Good afternoon. I would
9 like to set out some things first about what is not
10 on trial and what is.

11 First of all, the Medicaid program is not
12 on trial. We are all aware that there have been
13 articles in the paper and on television and other mass
14 media where certain aspects of the Medicaid program
15 have come in for criticism, where allegations are
16 hurled about in papers and all of these things have an
17 impact on us as people.

18 The Medicaid program is not on trial here.
19 We have no idea what percentage of people who are involved
20 in Medicaid ever do anything improper. Just because
21 some of the people have been indicted and some of the
22 people hit the newspapers, I am sure that the vast bulk
23 of people, the vast bulk of the doctors who are
24 involved, the chiropractors in the Medicaid program,
25 have never done anything improper. I don't want you to

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try Dr. Napoli on anything to do with the Medicaid program as a whole.

He is here to see whether or not his guilt has been proved beyond a reasonable doubt by the government. Nothing to do with the Medicaid program, just the actions of Dr. Napoli.

Another thing: By Dr. Napoli defending himself and my defending him, I don't want anybody to get the impression that we are condoning any improper practices. Nobody is up here saying that anybody who defrauds the government out of money or somebody who overbills intentionally and knowingly is a person who should not be prosecuted.

Just because Dr. Napoli contests the case against him does not mean that he condones or excuses any activities like that nor by my defending him do I condone it. That is not at issue here. What is at issue here is the sufficiency of the government's proof.

Now, everything that happened in this courtroom, and it happened pretty rapidly, everything that was done by the lawyers, by the Judge, was to funnel information to you in a legally permissible form. It was done for that reason, that is our

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1 function, just to get the information to you because
2 you are the sole judges of the facts. Nobody else
3 in this courtroom matters now except the 12 of you
4 that will make the ultimate decision as to whether or
5 not the government has proved its case.
6

7 I make arguments to you, the government
8 made its arguments.

9 The Judge will charge you on the law. Right
10 now this whole case is you. You are the only people
11 who really matter in this case at this point and it is
12 your collective judgment that will determine what
13 happens in this case.

14 Now, let's turn to the government's case.
15 The government's case consisted of 15 witnesses, 15
16 witnesses who testified basically that they saw the
17 doctor anywhere from one time to I think one of the
18 witnesses said she saw him maybe three or four times
19 and the bills show eight, nine, ten visits, eleven
20 visits I think in a couple of instances.

21 Now, I stated to you in my opening that
22 this represented only a small portion of Dr. Napoli's
23 practice and that is still correct. Mrs. Morey
24 didn't contest anything about the size of Dr. Napoli's
25 practice which is 1500 to 2000 people a year.

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2 You also heard from the witnesses themselves,
3 though they never admitted it, and I wouldn't expect
4 them to, that it is common practice to exchange
5 Medicaid cards. Do you have any doubt that that is
6 a common practice?

7 You also heard that the Medicaid cards have
8 no identification on them. Absolutely none. They
9 come into a doctor, especially a doctor that sees 35
10 or 40 people a day, there is no way from that Medicaid
11 card that he can tell whether that person is the person
12 who should be receiving the treatments.

13 Maybe it's not the best procedure. Maybe
14 the government should put a photograph of the people who
15 receive the services on the card.

16 We know that it is a widespread practice
17 because these very witnesses admitted it was widespread.
18 Did they turn anybody in for doing it? Of course not.
19 Do you think they would admit it if they did it?
20 Of course not. Do you think that I could make magic
21 come out of the sky to make them admit anything? Of
22 course not.

23 That isn't all. You heard these 15 witnesses.
24 Now I am not going to give you a breakdown as to each
25 witness. I will point out some things about some of

the witnesses and other things about other witnesses,
but basically it is a collection of people.

You heard not merely that they didn't know
how many times they went to the pediatrician or their
doctors. You heard from the first five witnesses or the
first four witnesses who got on didn't know their
present doctor. They didn't know who their doctor
was last year. They didn't remember how many times
they saw a gynecologist. I have never been to a
gynecologist, but I would think that was an experience
you would remember, how many times you saw a gynecologist
as well as how many times you would remember seeing a
chiropractor. It certainly is an experience. It
isn't like somebody tapping on your knees. It isn't
like somebody saying, "How are you?" It is a very
remarkable circumstance that women, I think ever witness
was a woman, would remembr. Yet witness after witness
would say, "I remember I went to a gyn doctor, but I
don't remember how many times, I don't remember who he
was."

Now let's look at that in context. Is that
something that you can just wave away with the brush of
a hand and say, "Oh, well, that is a different circum-
stance" and we can't look at the fact that they didn't

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1 remember the gynecologist that they went to or the doctors
2 that their children went to or their present doctor.
3 You can't just wipe those away.
4

5 Look at the context of this office. It's
6 a Medicaid office. The chiropractor alone sees
7 35 or 40 people. He testified that his treatment
8 on Medicaid patients was an adjustment that took approxi-
9 mately two minutes, maybe three. The initial visit
10 would be a little longer. Eight, ten minutes at the
11 most including the treatment.

12 These people, not one of them from the
13 period of 1972 to 1976, the end of 1976, not one of them
14 told you that they had any reason whatsoever to recollect
15 or think about Napoli's treatment. That is five years.
16 They didn't even think about it.

17 Now, after five years they get a call from the
18 government. I submit to you, despite their denials,
19 people who are receiving benefits from the government,
20 think about your reaction when you get a call from the
21 government. The government wants to investigate something
22 to do with somebody you know. What is your initial
23 response? Are you pleased? Are you happy? Or are--
24 you frightened? Are you frightened that maybe they
25 are after you or maybe it is something you did and while

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1 you could explain it, they won't understand it.
2 Think about your own reaction when the government calls.

3 Not one of them, everyone, no, they are
4 calm, they don't get upset about anything. They knew
5 they never did anything wrong.

6 I ask you whether that flies in the face of
7 reason and common experience. I ask you to think
8 about your own experiences with people when they are
9 approached by the government and how suggestible
10 they are and how suggestive people are. Once they have
11 taken that position with the government or taken a position
12 with the government, do you think it is easy for them to
13 back off? Do you think that after they talked to Mrs.
14 Morey on the phone and said, "Oh, no, one or two, one
15 or two, maybe three, no more."

16 Do you think later, no matter what I asked
17 them, they would say, "No, I was wrong, I lied to Miss
18 Morey to protect myself" or "I was incorrect." Once
19 they said it, they were going to stick to it and they
20 were prepared again before they came to trial.

21 They were asked, didn't you tell Mrs. Morey
22 and I am sure they were shown the invoices to prepare
23 them to be witnesses. Doesn't it strike you as strange
24 that out of all of these witnesses, and I am talking
25

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2 about all of them, that the only doctor who they really
3 remembered very well was Dr. Napoli who they saw for
4 ten minutes five years ago. Doesn't it seem strange to
5 you that they don't remember, most of them, the vast
6 bulk of them don't remember the doctor they are going
7 to now, but they remember Dr. Napoli because he gave them
8 back massage.

9 I also submit to you that many medical
10 treatments, many pediatricians, many GP's in their
11 examination do the same type of flex motions. You
12 have all been examined --

13 MR. BLOCH: Objection, there is no evidence
14 of that.

15 THE COURT: I think it is within the jury's
16 province.

17 MR. WEISENFELD: Within your own knowledge
18 of the treatments that you yourselves have received
19 from your own doctors, aren't there many times that
20 there are things that could be confused as massage.
21 Aren't their times that people move your arms around
22 even though they are not chiropractors?

23 The other thing is that these people never-
24 said they saw a chiropractor before. Are we sure
25 that they even really know what a chiropractor's function

1 is, exactly what type of treatment it is?

2 You heard Mr. Bloch in summation say these
3 people came in for migraines and he treats the spine,
4 but you know that chiropractic treatment of the spine
5 affects headaches.
6

7 MR. BLOCH: Objection, there is no evidence
8 of that. That would require a doctor.

9 THE COURT: Go on.

10 MR. WEISENFELD: Do you think Dr. Napoli,
11 a chiropractor, would put down on an invoice that he treated
12 somebody for migraine headaches if migraine headaches
13 couldn't be treated by chiropractic services? If he
14 were going to make this all up, he could put down anything
15 he wanted, but he put down migraine. These people, if
16 you remember, lo and behold, three or four of them, went to
17 that clinic for headaches. Why did Dr. Napoli,
18 how did he happen to pick out migraine as a treatment
19 for these people? Was it just a lucky guess? No,
20 because these people had headaches. They went to the
21 clinic. Do you think they really remember who they
22 saw at the clinic? Somebody touched them, some of
23 them were there 70 or 80 times. You have the medical-
24 records to see how many times these people were there
25 during the course of the year. Do you really think they

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2 remember who was the chiropractor, the gynecologist,
3 the GP? Yet, that is what the government wants you to
4 do. Look at Dr. Napoli's treatments. Forget everybody
5 else's treatments. Just look at what he did because
6 they remembered it is unique.

7 These people constantly come in to a clinic,
8 they are constantly being treated by doctors, by people
9 who are medical practitioners but not doctors. Doesn't
10 it seem strange to you that the one person whom
11 they remember so clearly is Dr. Napoli and that is the
12 only doctor that they were spoken to by the government
13 about?

14 Doesn't that strike you as odd? Why was
15 their recollection as to everybody else so much weaker,
16 so much less credible than to Dr. Napoli? Was it
17 really because they remembered what happened or is it
18 because that is what they had been told was under
19 investigation and that is what they keyed on and once
20 they took the position with the government as to how many
21 visits, there was no way they were going to back off
22 of it.

23 Now, out of all of the vouchers here today--
24 there is really only one concrete proof of somebody
25 who was in a hospital at the time that there was a

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1 billing. Here again in the context of Dr. Napoli,
2 the size of his practice is important. Dr. Napoli
3 has not said that every voucher that he handed in was
4 absolutely accurate. They were accurate to the best
5 of his ability. This man was treating 40 patients
6 a day, 35 patients a day and he was making his records.
7

8 Yes, he must have made some mistakes. Just
9 on these invoices alone, that one proven mistake, and
10 that is all we really have here is one proven mistake,
11 it represents one, a 20th of a percent of the number of
12 entries in those invoices. That is 15 witnesses, 10
13 visits each let's say as an average, that is 150, it is
14 one out of 150 is the proven error. Does that mean
15 that this man intentionally of his own will purposely
16 defrauded the United States Government?

17 You heard Dr. Napoli on the stand. Maybe
18 his recollection as to when he started working at Lee
19 Avenue wasn't that great. What reason would he have
20 to fabricate about that? He certainly knows that the
21 only thing that is under investigation in this case
22 is his 1972 activities so he made a mistake.

23 happens. You can make a mistake on your
24 invoices too. Outside of that one time in the hospital,
25 the only evidence against him is out of the mouths of those

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witnesses.

Let me ask you this because it is important:
Take this as an analogy. Three or four kids are
standing around at home and the mother comes home and
points to each kid and says, "How many cookies did you
have?"

Now, what's the normal reaction that we have?
"Who ate the last cookie?"

"Oh, I only had one. I only had two."

Does that mean these people are intentionally
lying? No. Of course they have no direct motive shown
on the record for lying. We are not saying that they are
necessarily lying. What we are saying is that they
at the very least are mistaken.

Some of the witnesses. I think you know
from your own recollection, it is very clear that they
don't remember anything.

Now, what can you do. Can we say, well,
some people have a better memory than others, we will
credit some and not the others. What I ask you to look
at is the whole package in evaluating because you are going
to look at the whole package.

I know no matter what I say you are going
to say, "Well, there were 15 of them and the ones who

1 didn't have such a good memory, the others had a little
2 better memory, therefore maybe the whole thing is so."

3 The fact is the whole government's case is
4 improbable. We are talking about events four and a half,
5 five years ago. You heard the doctor say that this was a
6 very brief period of time, these treatments.

7 On top of that the vouchers or the invoices
8 show a very relatively short period of treatment. A
9 month, five weeks. The government may say to you,
10 "Oh, that shows you would remember if you saw somebody
11 eight or ten times in five weeks."

12 I submit to you it is all the more reason
13 you would forget because if you spent two minutes
14 with somebody eight or ten times, that is a total of
15 20 minutes or 30 minutes over a month, a period of
16 a month, five years ago. You could very easily
17 forget that. You could very easily not remember that
18 you saw him eight times. You might think you saw him
19 three times or two times.

20 Now, the judge in his charge is going to
21 charge you what a reasonable doubt is. It is not my
22 function to instruct you on the law, but in his charge--
23 on reasonable doubt I want you to listen to it very
24 carefully because I think it is a magnificent charge,
25

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I think it is much fairer than the New York State charge and I ask you to listen to it very carefully.

Why do I say that? Most definitions of reasonable doubt are that reasonable doubt is a doubt based on reason. That tells you absolutely nothing. That is a non sequitur. They are explaining what reasonable doubt is by using the word "reasonable" --

THE COURT: I suggest you follow your own admonition and leave the law to the Court.

MR. WEISENFELD: Certainly.

First of all, we are here today for one real purpose and that is to see if the government's proof is sufficient. Before the government can exercise control over a person, to have him convicted of a crime, he has to be convicted beyond a reasonable doubt.

Reasonable doubt is not a technicality, it is not a loophole, it is not something that is used for the guilty to avoid punishment. It is the cornerstone and the key of our system of criminal justice. It is the single more important aspect of it. Anybody who does not follow the charge completely and fully on reasonable doubt is not fulfilling their obligation as a juror.

1
2 Now, in his charge to you, part of the charge
3 will say a reasonable doubt is a doubt that would cause
4 a reasonable person to hesitate in his more important
5 personal and business affairs.

6 THE COURT: I don't think I will quite say
7 that. Please, I am asking you to leave the law to
8 the Court.

9 MR. WEISENFELD: Your Honor, I would like to
10 phrase my argument in those terms and that is a
11 standard --

12 THE COURT: Finish your argument any
13 way you wish to but leave the law to me.

14 I don't like to interrrupt. I hesitate
15 to do it very much and I am sure Mr. Weisenfeld has
16 no intention whatever of misstating the law, but he
17 can't predict what I am about to tell you with that much
18 accuracy and that is my function. We all have different
19 functions here and the reason is that each time the
20 charge has to be tailored to that particular case.

21 MR. WEISENFELD: Using the terms, without
22 going further, the definition of a reasonable doubt
23 is a doubt that would cause you to hesitate in
24 important affairs. Now I ask you to relate that to your
25 own personal experiences.

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2 Now, it is not a doubt that would stop
3 you from acting. That is not the test. It's not
4 a doubt that would cause you not to go ahead with
5 something.

6 THE COURT: I am sorry, I must direct you to
7 disregard what he is saying.

8 MR. WEISENFELD: Your Honor, may I approach
9 the bench?

10 THE COURT: No, take the law from me. I
11 will not tell you again.

12 MR. WEISENFELD: I haven't seen one case
13 where this language isn't used.

14 THE COURT: Don't continue instructing on the
15 law. Now this is three times I have had to tell you.
16 Stop it.

17 MR. WEISENFELD: I am not instructing. I am
18 phrasing my argument in the terms of the standard form
19 charge on reasonable doubt.

20 THE COURT: I am not asking for an argument.
21 I am asking you to stop it.

22 MR. WEISENFELD: Very simply stated, you
23 heard 15 people come in here that were Medicaid patients.
24 You know from their own testimony that it is a common
25 practice that they switch Medicaid cards and there is no

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identification on those cards.

You also know that it is a common practice that a lot of people are treated in those Medicaid centers, a lot of them on the same day, and all of these people, if they weren't going to Lee Avenue, they were going to a lot of different places and seeing a lot of different doctors and they didn't remember anything to speak of except Dr. Napoli.

I ask you whether you in your personal experience would like your future judged on the basis of the recollections of even 15 people as to how many times they came into your store or how many times they came into your shop or how many times they came to your house five years ago.

By the way, let's look at Dr. Napoli's activities that he testified to and unrefuted activities. The government offered no refutation.

He is asked by the government, 1972, the government is first exploring these matters, 1972 they say, Dr. Napoli, we would like to see your records. They don't subpoena the records. They just ask him for them and he turns them over to the government.

He turns them over. Then they are returned to him or part of them are returned to him by the

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1 government. He gets a copy back. The government
2 keeps the originals.
3

4 1975, he is contacted by the government
5 again and they say, early 1975 did like you to
6 be a witness in the grand jury.

7 Was he subpoenaed? No. He goes down
8 of his own free will.

9 When he gets down there they advise him
10 he has the right to an attorney. Does he ask for an
11 attorney? No. He goes into the grand jury without
12 an attorney outside to protect his rights. He goes
13 in.

14 They say to him, you don't have to testify
15 if you don't want to hear unless we give you
16 immunity, and that is right in the record of the grand
17 jury minutes. Does he refuse to testify? Does he
18 ask for an attorney? Does he ask for immunity? No,
19 he answers the questions and all of the questions that
20 he answered in there, the government has only brought a
21 charge as to one and that is the catchall phrase at the
22 end, "Did you ever submit any improper fictitious
23 vouchers."

24 Now, I ask you, is that the type of behavior
25 that a person who has something to hide goes through?

1
2 More important, after the grand jury he has a conversation
3 with Mr. Wilson and Mr. Wilson asks for more records
4 and more records are brought in.

5 Now, the implication is, the government says,
6 well, he didn't turn over the witness cards of the people
7 here.

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1 How could he have known. He was not indicted yet.
2
3 He didn't know the witnesses. He turned over his records
4 to Mr. Willson. What happened to them after Mr. Willson
5 got them? Is there any way there could have been the
6 discrepancies? If you believe the government's case,
7 these are the most stupid discrepancies. People who come
8 in one time, he bills 11 -- not people who come in five
9 or six times, but one time or two times. And as to these
10 people who said they had no back ailment, would he put down
11 that they have a back ailment? You are supposed to accept
12 whatever is written here. This case comes down to whether
13 or not you would convict a person on the basis of the
14 recollection of somebody five years after an event took
15 place in two minutes of time. This is after the government
16 was investigating this in 1972 and in 1975. The indictment
17 didn't come down until 1976.

18 I submit that Dr. Napoli's behavior pattern is
19 totally consistent with innocence. He turned over every-
20 thing that he was asked to turn over; he volunteered
21 everything that was asked of him. Now, five years after
22 the first time that the government is looking into it, now
23 he has to defense himself against the recollections of --
24 people about what doctors they saw five years ago. Think
25 about your own lives. Would you wish to be judged in this

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1 way? Do you think there is credible evidence beyond a
2 reasonable doubt to convict somebody in this court on this
3 evidence? I submit to you that, of course, there is a doubt,
4 a tremendous doubt about whether those people really
5 recollect or whether they are saying what they were told
6 by the government was the case that was being investigated.
7

8 Now, as to Dr. Napoli's invoices. You heard
9 several of the witnesses say they didn't see Dr. Napoli
10 that number of times. Where, then, do you think these
11 figures came from?

12 Now, there is another thing that is not on trial,
13 and that is the income tax matter that you heard a great
14 deal of. The United States Attorney has said that there
15 is a fraud in his income taxes. Those income taxes were
16 in possession of the government since 1972. If the govern-
17 ment really has a case of income tax fraud of \$9,000, do
18 you think they would save it for cross-examination of
19 character witnesses, or wouldn't they have acted on it?
20 You also heard about factoring and other things. Yet
21 Dr. Napoli didn't know the difference between accrual and
22 the cash method. If the government had a case of tax
23 fraud in that amount it certainly would have brought a
24 civil proceeding.

25 MR. BLOCH: Objection. There is no evidence of

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any proceedings of any kind.

MR. WEISENFELD: I agree there is not.

MR. BLOCH: Either way.

THE COURT: There is no evidence on the subject, but I think it is within the realm of fair argument.

MR. WEISENFELD: The government took absolutely no action on this. There is an income tax form of 1972. They were investigating Dr. Napoli since 1942. I ask you to use your common sense, whether if the government really believed there was fraud on those taxes, and not just some mistake, that they would not have proceeded against Dr. Napoli. I think that is very important, because that was used, and although it was asked of the character witnesses, I know the impact that it had on you, that this man might have cheated on his taxes, and if he cheated on his taxes, maybe he cheats on everything. There is no indication that he cheated, and the government would have acted on this years ago if there was any real cheating. It had these documents for some years. We are not trying Dr. Napoli on his income tax. You are trying him here simply on his Medicaid practice.

You heard the character witnesses. Yes, the character witnesses all came from his private practice. Are we to infer from that that he is only decent when it

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comes to his private practice and when it comes to his government practice he becomes a fraud? A man's character is consistent. Most of us don't behave differently in one area than another. We have our patterns of behavior. You heard all of those people testify. They had no reason to lie, either. They would not take the stand and lie, perjure themselves for a friend, for a psychiatrist who had treated them. Would you do that? Every single one of them spoke of this man and said he was a good man, of the highest reputation for honesty. That cannot be just thrown out. You cannot just disregard that. People who know him best in his community, his patients, you just can't forget about them. These 15 people said that they had only seen him a couple of times. Should we forget about everything else that has happened in this court? You can't do that. Character testimony is admissible. That is why it is permitted to be brought out.

Now, in conclusion I will just say very simply that this case has moved along in a brisk fashion, and we have had very little dead time. This case is strictly credibility. Not once did I say that I felt that I knew or that we proved that anybody intentionally lied in this case. What we are saying is these people, the bulk of these people are just mistaken; they are mistaken about

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2 ancient events; these are the types of mistakes that we
3 make in our own lives and are shocked to find out about
4 after the event. How many times have you said to yourself,
5 "Gee, I was there." How many times have you said that
6 to yourselves. How many times have you heard other people
7 say it. Does that mean we are bad people? Does that
8 mean that I think that is something evil? No, they are
9 just mistaken, outright mistaken.

10 I ask you to take into consideration the testimony
11 given by the government witnesses of exchanging cards. Again,
12 they may not want to admit and they didn't admit it, but
13 I ask you to use your common sense about whether or not
14 that could have or did occur in this case, because if
15 somebody loaned someone else a card and they use it,
16 receive treatment from Dr. Napoli, Dr. Napoli's vouchers
17 would show or his invoices would show those treatments,
18 but the person whose card it is, they would not say they
19 went in for 11 treatments; they would be afraid because
20 of what happened. They said, "No, I only saw him once and
21 I didn't go back." I ask you to use your common sense
22 about that.

23 Now, we are just lawyers. We cannot bring thunder
24 down from the skies. So I ask you to use your common sense,
25 your own experience in dealing with people, whether this

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1 thing did occur. I ask you to look at the pattern of
2 Dr. Napoli's behavior from the time that the government
3 first apprised him that he had a problem, whether those
4 are the type of actions that a guilty person would take--
5 given his records without subpoena, testifying without
6 immunity, without a lawyer. On several occasions that
7 is what he did. Is that the conduct of a guilty man?
8 You would have to assume that he knew what was on these
9 records. He would know that they would stand out like
10 a sore thumb if they were fraudulent. He went down to
11 the grand jury. Any questions asked of him he answered.
12 Is that the pattern of a man who knowingly, wilfully
13 defrauded the government, submitted false invoices? No.
14 When you add to that the character witnesses, you have
15 some understanding of the kind of person that Tony Napoli is
16 to those people who know him best. When you add those factors
17 together, along with the inherent weaknesses in the govern-
18 ment's case, I am sure you will find him not guilty.

19
20 Now, there was a mistake made here in the billing
21 of Miss Brown. She was in the hospital at the time. But
22 when you add all these factors together, I am sure you
23 will not be impressed by that. I say that we have here
24 more than a reasonable doubt.

25 You heard Dr. Napoli's testimony. The United

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1 mmk:7

2 States Attorney asked him about his taxes. No questions
3 were asked about the vouchers, just about a tax problem.
4 There is a reasonable doubt here as wide as the Mississippi
5 River. Just think about whether you would want your
6 future to depend on somebody's recollection of what they
7 did four and a half years ago where they had no cause
8 to remember until they are called to court. Thank you
9 very much for your attention. I know that many of the
10 witnesses testified to similar events. Cross-examination
11 must have sounded like a parrot at some point. It is
12 just a necessity under the type of case it is. I know
13 that you have a difficult task ahead of you. Lawyers can
14 never participate in jury deliberations. I envy you,
15 because it is a great responsibility. I ask you to use
16 your common sense when you go in there. I ask you not to
17 be over-impressed by numbers; there is a reasonable doubt
18 here and I ask you to acquit Tony Napoli of the charges
19 against him.

20 Mr. Bloch said if you find him guilty on one
21 of the substantive charges, you have to find him guilty
22 on the perjury, and I say if you don't find him guilty
23 on the perjury, you cannot find him guilty on any of the
24 substantive counts. I submit that the government has not
25 proved its case beyond a reasonable doubt, and I urge you

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2 to acquit, which I believe is the only just verdict. I
3 am sure that you would want to arrive at a just verdict.
4 Thank you.

5 THE COURT: Mr. Bloch.

6 MR. BLOCH: I will be very brief. I believe
7 all the matters were covered in my direct summation.

8 Ladies and gentlemen, 15 people testified here
9 about something; they took an oath. Mr. Weisenfeld gives
10 you the suggestion that they would never move from their
11 testimony once they spoke on the telephone. But you heard
12 at least two witnesses say, "I was wrong. I said I may
13 not have seen him, but, in fact, I saw him three times
14 when I thought about it." Another witness who said, "I
15 saw him once," said, "I saw him more than that." They
16 were willing to change their testimony. There was no
17 evidence that they were locked into their testimony whatever.
18 In one instance a witness was asked, "Were you told what
19 to say?" And that witness said she was told to tell the
20 truth. That is what they were told to say.

21 Ladies and gentlemen, I submit that the odds
22 are that you have one out of three people that Miss Morey
23 contacts who come into court and swear under oath, face
24 the possible charge of perjury, and admit things about
25 themselves. Are they not to be believed? I submit that that

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just can't be.

A couple of times Mr. Weisenfeld, who is more eloquent than I am, an excellent lawyer, seemed to be arguing out of both sides of his mouth. On the one hand he says these witnesses remember nothing. Sure, they did not all remember Dr. Napoli. In fact, I think only two people in the whole trial remembered Dr. Napoli, those who remembered him by name, maybe three. If we were going to coach these witnesses, wouldn't they come marching in here saying, "This is Dr. Napoli." If they were coached, wouldn't we have gone through these medical records and wouldn't the witnesses say, "I saw Dr. Alizadeh twelve and a quarter times in 1972"? I submit, ladies and gentlemen, these witnesses were telling you the truth, and just because they are poor, have a lot of children, does not mean that their recollection is any worse than anybody else. Their education might be lower; they may have more children to keep track of, but, ladies and gentlemen, their recollection, one out of three, is clearly to be believed.

Going to another area, Mr. Weisenfeld is sort of arguing on two ends. He says that these witnesses would not remember having a treatment that took but a minute or two. A private patient gets treated for 60 minutes. And

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2 then some of the witnesses said the treatment was not doing
3 any good. So he comes up with another strawman on the
4 opposite side and says, "Well, they loaned their cards to
5 somebody else." It can't possibly be.

6 Finally, ladies and gentlemen, there is the
7 issue of credibility. Do you believe the 15 witnesses
8 or do you believe Dr. Napoli?

9 Mr. Weisenfeld also mentioned the tax return
10 and tax charges. There is no evidence of tax charges having
11 been brought. ladies and gentlemen, you can find that
12 a person who does not claim \$9,000 on his tax return
13 would be willing to cheat on Medicaid vouchers. More
14 important, Mr. Weisenfeld does not mention probably the
15 single most important piece of my cross-examination. I
16 asked Dr. Napoli when he started working there, and he
17 said in 1972. We have invoices from April, 1971, when he
18 says he didn't work at Lee Avenue. We have him billing
19 four days a week. Take that calendar, compare it to the
20 invoices. He billed for days when he says he was not
21 working. Ladies and gentlemen, those 15 witnesses were
22 telling the truth; they had no reason to lie. And I submit
23 to you that you should return a verdict of guilty on each
24 count.

25 THE COURT: We will take our luncheon recess at

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2 this point. Don't talk about the case; don't let anybody
3 talk to you about it. Please return at 2 o'clock. At
4 that point the Court will instruct you on the law that
5 applies to this case.

6 (Jury excused)

7 THE COURT: I just want to be sure that you have
8 elected the 1001 charge.

9 MR. BLOCH: That is right, your Honor.

10 THE COURT: You have not given me any requests
11 to charge.

12 MR. WEISENFELD: The only request that I have--
13 and I have a photocopy of it -- is the standard Black
14 and Devitt reasonable doubt charge.

15 THE COURT: I give my own charge on reasonable
16 doubt. That is part of it.

17 MR. WEISENFELD: As long as it includes that
18 language, I am sure your Honor's charge on reasonable doubt
19 will be adequate.

20 THE COURT: Yes.

21 MR. BLOCH: The government requests one additional
22 charge on destruction of records being evidence of con-
23 sciousness of guilt.

24 THE COURT: There is no proof of it.

25 MR. BLOCH: The jury may infer it.

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2 THE COURT: There is no proof of it.

3 MR. WEISENFELD: May we go over the government's
4 requests to charge, about aiding and abetting?

5 THE COURT: I might say I will not give verbatim
6 any of them. I think you might more profitably wait until
7 I charge the jury, and then if you have an exception.

8 MR. WEISENFELD: Like conscious avoidance.
9 There is no evidence from which that can be drawn. The
10 record would not make out a conscious avoidance. It would
11 be most improper.

12 THE COURT: What do you say about that?

13 MR. BLOCH: The government will withdraw the
14 charge. I think he is right.

15 MR. WEISENFELD: Also request number 10, aiding
16 and abetting:

17 "The government also contends that in connection
18 with these questions the defendant may be held responsible
19 out of the 'aiding and abetting' statute."

20 There is reference then to 18 USC, Section 2.

21 THE COURT: I would be quite happy to take it out.
22 I think you are only complicating this with aiding and
23 abetting. There is no proof that he himself prepared
24 the invoices; somebody else prepared them.

25 MR. BLOCH: It was for the reason of getting them

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2 to HEW.

3 THE COURT: Do you have any objection to taking
4 it out?

5 MR. BLOCH: No.

6 THE COURT: We will take it out.

7 MR. WEISENFELD: Request number 20 is a request
8 on the seriousness of perjury. The jury knows all crimes
9 are serious.

10 THE COURT: I have not followed this language.

11 MR. WEISENFELD: They say here it is a crime
12 which is at the heart of our administration of justice.
13 They understand these are serious charges.

14 THE COURT: Listen to what I charge. I am not
15 going to charge that in that precise language.

16 MR. WEISENFELD: I object to the language of
17 number 23 as to the testimony of a defendant.

18 MR. BLOCH: I am sure your Honor has a standard
19 charge on that.

20 THE COURT: Yes.

21 MR. BLOCH: Whatever your Honor charges will be
22 satisfactory to the government.

23 MR. WEISENFELD: What your Honor is saying now,
24 to reserve objections until we hear the full charge?

25 THE COURT: I will hear you at the side bar if

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2 you have some real objection.

3 I want the record to note that in denying your
4 requests to wait for daily copy, the Court was mindful
5 of the fact that it would take at least the rest of the
6 morning to complete summations. The charge here is of some
7 length, and you just can't give these cases to the jury
8 late in the afternoon. It is not fair to your client
9 or to the government. The jury would be down here half
10 the night and the Court could not continue this trial over
11 until tomorrow because it has other commitments, specifically,
12 sitting on the Court of Appeals in the morning and a trial
13 in the afternoon.

14 MR. WEISENFELD: May I state for the record since
15 I ordered daily copy I felt that my summation, especially
16 as to specifics of various witnesses was essential for me
17 to have and not having it was of significant handicap in
18 making my summation.

19 THE COURT: I would expect you to say that,
20 but I thought it would not have been difficult to take
21 notes. One witness said, "The doctor said I was lop-sided,"
22 and other witnesses said that the doctor gave them a
23 massage; the witness said she had no children, and other
24 details such as that.

25
(Luncheon recess)

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AFTERNOON SESSION
2:15 p.m.

(In open court; jury present)

THE COURT: Good afternoon.

It now becomes my function to instruct you on the law that applies to this case. The Court and the jury have different functions. I am the exclusive judge of the law. It is my function and duty to preside at the trial, rule on objections and at this stage of the case to instruct you on the law that applies to the charges made here.

It is your duty to accept the law as I give it to you, whether or not you agree with it, and to apply it to the facts as you find them.

You are the exclusive judges of the facts. You and you alone decide what weight, what effect and what value you will give to the evidence.

You and you alone decide whether or not to believe a witness and, of course, ultimately you decide whether this defendant is guilty or not guilty of the charges made against him.

You are not to conclude from any rulings that I have made throughout this trial or any questions that I have asked that I have any opinion, one way or the

other, as to what your verdict should be as to the guilt or non-guilt of this defendant. That decision is exclusively up to you.

Finding the facts is merely a process by which you, the jury, consider the exhibits, which have been received in evidence, and the testimony of all of the witnesses, both on direct and on cross-examination. Sift out what you believe, weigh it in the scale of your reasoning powers and common sense, and draw such conclusions as your experience and common sense tell you the evidence supports and justifies and decide just where the truth lies in this case.

In this connection all evidence is of two general types, direct evidence and circumstantial evidence. Evidence is direct when the facts are shown by exhibits, which have been admitted into evidence, or when the facts are sworn to by witnesses who have actual knowledge of them from something that they have seen, something that they have done, something that they have heard and so on.

Circumstantial evidence simply means the drawing of a logical conclusion from other connected facts established by direct evidence.

No greater degree of certainty is required when evidence is circumstantial than when it is direct

1 eor?

2 for in either case you must be convinced beyond a
3 reasonable doubt before you can find the defendant
4 guilty.

5 It is your memory of the evidence that
6 controls. It is not the way counsel remember it. It
7 is not the way I remember it. If your memory squares
8 with the lawyers' version of the evidence, as they
9 stated in in their closing arguments, you may accept
10 what they say, but to the extent that you have a
11 different memory of the evidence, you are bound
12 by your oath to reject what they said and to rely on
13 your memory.

14 When I say "your memory," I mean your
15 collective memory. Sometimes jurors, I take it from
16 seeing too much television, are only out there five or ten
17 minutes and they send in a note that they want all of
18 the testimony re-read and similar notes before they have
19 made any attempt whatever to exhaust their own memory.
20 If in the end you can't remember and some one of your
21 fellow jurors can't help you remember or assist you in
22 your memory of it and you want the testimony read,
23 you may have it read and I will have the court reporter
24 dig it out of his notes and read it to you if you want it,
25 but try to be specific.

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2 Bear in mind that you will have to hear
3 all of it, both on direct and on cross-examination,
4 so if you do resort to that process, please make your
5 notes clear and try to pinpoint what you want.

6 In that connection the forelady is the
7 foreman of the jury and will communicate with the
8 Court. Any notes must come from her and be signed by
9 her.

10 One of your most important functions is to
11 determine which witnesses you will believe and this is
12 so as to every witness, whether called by the government
13 or by the defendant. You are not to be influenced
14 by the number of witnesses called by either side or the
15 length of the testimony or the fact that the trial
16 took two days. You are concerned not with the
17 quantity of the evidence but with the quality of the
18 evidence.

19 The first test which you should apply in
20 determining the trustworthiness of a witness is to
21 measure what the witness says against your plain
22 everyday common sense. You are not bound to believe
23 unreasonable statements or to accept testimony that
24 defies your common sense or, worse, insults your intelligence
25 just because the statements are made under oath in a

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2 courtroom.

3 You saw the witnesses in this case. I
4 saw you observing every witness with particular care
5 as they were testifying.

6 In deciding whether to believe the witness
7 you should consider his or her conduct on the stand.
8 How did the witness impress you as you were watching
9 him? Was the witness being frank with you? Was the
10 witness evasive? Was the witness versed in the facts,
11 candid and straightforward? Was the witness trying
12 to conceal anything? Was the witness just parroting
13 answers?

14 Does the witness have any motive whatever
15 to testify falsely? Is the witness interested in the
16 outcome of this case in any way? How strong or
17 weak was his memory of important events? Did he
18 forget the unforgettable? Can you rely on the witness?
19 Can you trust him or her? Did the witness show any
20 bias or prejudice toward either side?

21 You ought to consider also the opportunity
22 of the witness to know the facts about which he
23 testified and which are in issue here and the
24 probability or improbability of what he said in light of
25 the totality of all the circumstances.

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How does the witness' testimony add up when considered with all of the other evidence? How far does his story check out with the other evidence particularly with the documentary evidence?

Is the statement of the witness supported by documentary evidence, either documentary evidence which exists or documentary evidence which ought to exist?

Is his story supported by documentary evidence made at a time when there was no motive to fabricate?

Are there any inconsistencies in the testimony of the witness and, if so, how important are they? Has the witness made any inconsistent statement on an earlier occasion and, if so, how important are those inconsistencies?

In determining whether there were any inconsistencies on prior occasions, you should consider not only what was said but what was left out.

Now, there has been testimony here by a number of witnesses as to the good reputation of this defendant. You should consider such evidence of good reputation, including the testimony of such witnesses on cross-examination, together with all the other evidence in determining the guilt of the defendant. The testimony of reputation witnesses or character witnesses

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1 is not to be regarded by you as expressing their opinion
2 as to the guilt or innocence of this defendant in this
3 case. That question is for you and for you alone
4 to decide.
5

6 You should, however, give consideration to
7 the evidence of good character and good reputation
8 for such evidence may in itself constitute reasonable
9 doubt when considered in light of all the other circum-
10 stances.

11 The defendant testified as a witness. He
12 was not required by law to do so and his appearance as
13 a witness was entirely voluntary. If he had not
14 testified, his failure to do so could not have been
15 considered by you in any manner in determining his
16 guilt or innocence, but having chosen to testify, the
17 law requires that his testimony be judged and appraised
18 by the same standards applied to the testimony of any
19 other witness, giving consideration, of course, to his
20 background, to his personality and to his natural interest
21 in the outcome of this trial.

22 If you find that any witness has deliberately
23 and wilfully lied with respect to any material fact
24 in his or her testimony offered at this trial, you may
25 follow either one of two courses. You may accept as

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much of the witness' testimony as you believe or you may reject, if you wish, his or her entire testimony.

Before discussing the crimes charged here, I want to remind you that an indictment is a mere accusation. It is not evidence of the truth of the charge made and you are to draw no inference of guilt from the mere fact that the defendant has been indicted. An indictment simply means that the defendant has been accused of crimes. The defendant has denied the charges made against him here both by his plea of not guilty and by his testimony on the stand.

The defendant has no burden of proof to sustain in this case. He is under no obligation to produce any witnesses. He is presumed to be innocent and this presumption of innocence continues throughout the trial and during your deliberations. This presumption of innocence is overcome when, and only when, the government establishes the guilt of the defendant beyond a reasonable doubt.

What do I mean by "beyond a reasonable doubt?" As the phrase implies, a reasonable doubt is a doubt that is based upon reason, a reason which appears in the evidence or in the lack of evidence. It is not a vague, speculative, imaginary doubt, nor a doubt based

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2 upon emotion, sympathy or prejudice or upon what some
3 juror might regard as an unpleasant duty.

4 The government is not required to prove a
5 defendant guilty beyond every possible doubt, nor to
6 an absolute or mathematical certainty because such
7 measure of proof is usually impossible in human
8 affairs.

9 You should review all of the evidence as you
10 remember it. Discuss it with your fellow jurors.
11 Sift out what you believe, analyze, weigh and compare
12 your view of the evidence with your fellow jurors.

13 If that process produces a solemn belief
14 or conviction in your mind, such as you would be willing
15 to act upon without hesitation if this were a matter of
16 importance to yourself, then you may say that you have been
17 convinced beyond a reasonable doubt.

18 On the other hand, if your mind is wavering
19 or so uncertain that you would hesitate before acting
20 if this were a matter of importance to yourself, then
21 you have not been convinced beyond a reasonable doubt
22 and you must render a verdict of not guilty.

23 There are now 16 counts of this indictment
24 remaining for your consideration. They are counts
25 21 through 23, 25 through 28, 30, 32 through 36. 38

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2 through 39 and 41. Each of these counts charges a
3 separate crime and each count must be considered and
4 decided separately.

5 Some of the counts of this indictment have
6 been eliminated by the Court to simplify your task
7 and for reasons which do not concern you. The elimination
8 of these counts is not to be deemed by you to have any
9 bearing whatsoever on the guilt or non-guilt of the
10 defendant on the counts which remain for your
11 consideration.

12 I will give you a copy of the indictment which
13 will contain only those counts which are before you for
14 consideration.
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2 In this case, there are two classes of crimes
3 which you must consider. The first class -- Counts 21
4 through 23, 25 through 28, 30, 32 through 36, and 38 through
5 39 -- charges that on 15 invoices, in a matter within
6 the jurisdiction of a department or agency of the United
7 States, the Department of Health, Education and Welfare,
8 the defendant:

9 Did falsify, conceal and cover up, and cause
10 to be falsified, concealed and covered up, by trick,
11 scheme and device, material facts:

12 Did make and cause to be made false, fictitious
13 and fraudulent statements and representations:

14 Did make and cause to be made, and did use
15 and cause to be used, false writing and documents, knowing
16 the same to contain false, fictitious and fraudulent
17 statements and entries, in that he submitted, and caused
18 to be submitted to the Department of Health, Education
19 and Welfare, various false and fraudulent statements,
20 which were based in part upon invoices for doctor's services
21 in which he certified, and caused to be certified, that
22 the services described therein had been rendered by him
23 to the Medicaid patients listed therein, when, in truth
24 and in fact, as he then and there well knew, said
25 certifications were false in that some or all of the claimed

1 mmh2

2 services had not been rendered.

3 These counts concern 15 invoices. The
4 government claims that each of these invoices is false,
5 fictitious and fraudulent.

6 Here, again, you must consider each count
7 separately.

8 These counts are based on a federal law which
9 provides:

10 "Whoever, in any matter within the juris-
11 diction of any department or agency of the United States,
12 knowingly and wilfully falsifies, conceals or covers-up,
13 by any trick, scheme, or device, a material fact, or
14 makes any false, fictitious or fraudulent statement or
15 representations, or makes or uses any false writing or
16 document, knowing the same to contain any false, fictitious
17 or fraudulent statement or entry ..." commits a crime.

18 In order to convict the defendant on each of
19 these counts, the government must prove to your satisfaction
20 beyond a reasonable doubt each of the following elements:

21 (1) That on or about the date set forth in the
22 count which you are considering, the defendant made or
23 caused to be made a false, fictitious or fraudulent statement
24 or representation of a material fact; or made or used any
25 false writing or document which contained any false,

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1 mmn3

2 fictitious or fraudulent statement or entry of a material
3 fact; or, by trick, scheme or device, falsified, concealed
4 or covered up a material fact;

5 (2) That the false statement or representation
6 or document or concealment was made or used in a matter
7 within the jurisdiction of a department or agency of the
8 United States;

9 (3) That the defendant acted knowingly and
10 wilfully.

11 As to the first element, in determining whether
12 the statement or representation or document or concealment
13 was material and false, fictitious or fraudulent, the
14 question for you to decide, as to each of these invoices,
15 is whether it claimed payment for any false, fictitious
16 or fraudulent item.

17 False statements may consist of just plain lies.
18 For example, it would be false, fictitious and fraudulent
19 here, if the defendant knowingly claimed payment for
20 services rendered on 10 occasions, when, in fact, services
21 were only rendered on less than 10 occasions.

22 Such statements, of course, must be material,
23 and by that I mean they must reasonably be expected to
24 influence the Department of Health, Education and Welfare
25 in deciding whether to accept the claim and pay the bill.

368a

1 RE: 4

2 It is not necessary for the government to
3 establish that the Department of Health, Education and
4 Welfare relied on or suffered damages as a consequence
5 of any false representation. It is enough that the de-
6 fendant expected that the Department of Health Education
7 and Welfare would rely on the false representation. Nor
8 does the government have to prove that all the entries
9 on an invoice were false. It is sufficient if you find
10 that one or more of them was false, fictitious or fraudulent.

11 You will note that the law involved in this
12 first class of crimes refers to "trick, scheme or device."
13 A scheme is any plan by which one seeks to obtain money
14 or property from another by means of false representations
15 as to a material fact. Sometimes a half-truth is no
16 better than an outright lie, and fraudulent misrepresenta-
17 tions may be made by half-truths calculated to mislead.

18 You may find a "trick, scheme or device," if
19 you find that the statement, when considered in the light
20 of all of the circumstances, was calculated to
21 defendant to deceive, mislead or create a false impression
22 as to the extent of the services rendered by the defendant
23 on the minds of those intended to be influenced by the
24 statement-- here the Department of Health, Education and
25 Welfare. Of course, such representations must be of

1 mmhE

2 a material fact.

3 The second element, you will recall, is that
4 the false statement or representation or document or
5 concealment was made or used in a matter within the
6 jurisdiction of a department or agency of the United
7 States.

8 I charge you, as a matter of law, that the
9 Department of Health, Education and Welfare is an agency
10 of the United States, and that the submission of federally-
11 reimbursible Medicaid claims to the New York City
12 Department of Social Services is a matter within the
13 jurisdiction of the Department of Health, Education and
14 Welfare.

15 The third element, you will recall, is that
16 the defendant acted knowingly and wilfully. You will note,
17 however, that each of these counts charged that the defendant
18 acted unlawfully, wilfully and knowingly. I will now explain
19 what those terms mean.

20 The term "unlawfully" simply means that a
21 defendant's conduct is prohibited by law. It does not
22 mean that he must know that his conduct is prohibited
23 by law.

24 The term "wilfully" only means that the
25 defendant acted of his own free will; that he was not forced

1 mmh6

2 or coerced; that he acted voluntarily; that he knew what
3 he was doing; and that he acted intentionally and on purpose.

4 The term "knowingly" simply means that a defendant
5 must be aware of what he is doing, and that he acts
6 freely and voluntarily, deliberately or on purpose, not
7 because of some mistake, accident, carelessness, or other
8 innocent reason.

9 Thus, it is not enough that the invoices
10 submitted to the Department of Health, Education and Welfare
11 were, in fact, false. The government must prove beyond
12 a reasonable doubt that the defendant was aware and conscious
13 of the fact that the invoice in question claimed payment
14 for more services than he had actually rendered.

15 Guilty knowledge cannot be established by mere
16 proof of negligence, or even foolishness on the part
17 of the defendant. However, you may find that the defendant
18 had guilty knowledge that the invoice in question contained
19 false, fictitious or fraudulent statements if you conclude
20 in light of all the circumstances shown in the evidence
21 that he was aware that the invoice claimed payment for
22 services rendered on more occasions than the actual number
23 of occasions on which he had rendered services.

24 It is not necessary for you to find that the
25 defendant knew or by whom a submitted invoice would

1 mmh7

2 be processed, or that it would be covered by Medicaid or
3 be paid in whole or in part by the United states.

4 This brings me to the second class of crime
5 charged. That crime is alleged in Count 41.

6 Count 41 charges that on or about January 16,
7 1975, the defendant appeared before a grand jury, took
8 an oath that he would testify truthfully, but made the
9 following false, material declaration:

10 "Dr. Napoli, did you ever submit a fictitious
11 invoice in the sense that you either billed for a patient
12 you had not seen or billed in excess of a number of visits
13 you actually administered?

14 "A No, I have not."

15 Count 41 of the indictment charges the defendant
16 with violating a federal law, which, in pertinent part,
17 provides:

18 "Whoever, under oath, in any proceeding before ..
19 any .. grand jury of the United States, knowingly makes
20 any false, material declaration" shall be guilty of a crime.

21 Simply stated, as applied to the charges in this
22 case, a false declaration is the making of a statement
23 by a witness, under oath, before a grand jury as to a material fact,
24 which the witness knows to be false at the time he
25 makes the statement.

372a

1 names

2 The indictment charges that the defendant,
3 appearing as a witness, under oath, made false, material
4 declarations on or about January 16, 1975, to a federal
5 grand jury in this district, which was conducting an in-
6 vestigation to determine whether there had been committed
7 in this district violations of federal laws in connection
8 with claims for payment under the Medicaid Act by various
9 providers of health services, including medical doctors,
10 dentists, chiropractors, podiatrists, opticians and
11 medical laboratories.

12 Now, in order to convict the defendant on Count
13 41 the government must prove to your satisfaction beyond
14 a reasonable doubt each of the following elements:

15 (1) That or or about January 16, 1975, the
16 defendant had taken an oath to testify truthfully before
17 the grand jury and that he made the statements or gave
18 the answer set forth in the indictment under oath;

19 (2) That the statements or answers were false;

20 (3) That the defendant knew and believed that
21 his statements and answers were false at the time he made
22 them, but, nevertheless, made them knowingly and wilfully;

23 (4) That the false statements or answers were
24 material to the matters being investigated by the grand jury.

25 As to the first element, there is no dispute in

1 the evidence that the defendant appeared as a witness
2
3 before the grand jury on or about January 16, 1975,
4
5 and took an oath before the grand jury that he would
6 testify truthfully.

7 As to the fourth element, I instruct you,
8 as a matter of law, that the defendant's statements and
9 answers were material to the inquiry pending before the
10 grand jury, and there is no dispute that the defendant
11 was asked the question and gave the answer set forth
12 in the indictment.

13 The second element is that the defendant made
14 false statements or gave false answers concerning the
15 facts contained in the question specified in the indictment.

16 In considering the second element, you must
17 first read the testimony given by the defendant before
18 the grand jury, as set forth in the indictment, and
19 determine just what statements of fact the defendant made.

20 The third element, you will recall, is that
21 the defendant knew and believed that his statements or
22 answers were false, but, nevertheless, made them knowingly
23 and wilfully, contrary to his oath, that is, that the
24 defendant deliberately testified contrary to what he
25 himself believed in his own mind. Here you will bear
in mind my earlier instructions on knowledge and wilfulness

1 mmh

2 when we discuss the first class of crimes.

3 With respect to this element, the word "knowingly"
4 means that the defendant, aware of the true facts, made
5 a false statement or gave false answers under oath, with
6 knowledge on his part that the statement or answer was
7 false, and that he intended to make a false statement
8 or give a false answer consciously and in the exercise
9 of his free will.

10 If, at the time the defendant testified before
11 the grand jury, he was not aware of the true facts or
12 that he was making a false statement; or, if he knew
13 and believed his statement was true at the time he made
14 it, then he did not act knowingly. But if he knew that
15 his statement or answer was false, he did act knowingly.

16 Thus, if you find that the defendant's statements
17 or answers were made due to a faulty memory or recollection,
18 or a misunderstanding of the question or its import, or
19 confusion, these circumstances would negate wilfulness
20 on the part of the defendant.

21 Wilfulness involves the state of a person's
22 mind, the intent and purpose with which a person acts.
23 Knowingly involves what he, in fact, knew. Medical science
24 has not yet devised an instrument which can depict what
25 is in a person's mind.

375a

MEMO

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The state of a person's mind is inferred from what he says or does: his words, his actions, his conduct, and all of the surrounding circumstances which give us a clue as to what is in a person's mind.

The government, however, in the main, relies upon direct evidence of the invoices and the testimony of witnesses as to what allegedly are the true facts as to which it charges the defendant made false statements or gave false answers. The proof of falsity of a defendant's statements may be made by any number of witnesses.

Consider each count separately. If, after considering all of the evidence, you find as to the count which you are considering that the government has failed to prove, beyond a reasonable doubt, all of the elements of the crime as I have defined them to you, then you should find the defendant not guilty on that count.

On the other hand, if, after considering all of the evidence, you find as to the count which you are considering that the government has proved, beyond a reasonable doubt, each of the elements of the crime as I have defined them, then you should convict the defendant on that count.

You are instructed that the question of possible punishment of a defendant in the event of conviction is no

1 mmh
2 concern of yours and should not in any sense enter into
3 or influence your deliberations. The duty of imposing
4 sentence in the event of a conviction rests exclusively upon
5 the court. The function of the jury is to weigh the evidence
6 in the case and determine the guilt or innocence of the
7 defendant solely upon the basis of such evidence.

8 When you retire to the jury room, you will treat
9 one another with consideration and respect, as I know
10 you will. If differences of opinion arise, discussions
11 should be dignified, calm, intelligent. Your verdict
12 must be based on the evidence and the law, the evidence
13 which was presented in this case, as you remember it,
14 and the law as I have given it to you in this charge.

15 You are each entitled to your own opinion. No
16 juror should acquiesce in a verdict against his individual
17 judgment. Nevertheless, I would point out that no one
18 should enter the jury room with such pride of opinion that
19 he would refuse to change his mind if convinced by intelligent
20 argument on the part of another juror or jurors.

21 Discussion and deliberation are part of our
22 democratic jury process, and your deliberations should
23 be approached as such. Jury deliberation is jury discussion.
24 Talk it out.

25 Each of you, in effect, should decide the case

1 and
2 for himself, after thoroughly reviewing the evidence
3 and frankly discussing it with your fellow jurors, with
4 an open mind, with a desire to reach a verdict. If you
5 do that, you will be acting in the true democratic
6 process of the American jury system.

7 There are 12 of you on this jury. The alternates
8 will be excused before you retire for your deliberations.
9 Any verdict must be the unanimous verdict of all of you
10 and it must represent the honest conclusion of each of
11 you.

12 I submit the case to you with every confidence
13 that you will fully measure up to the oath which you took
14 as members of the jury to decide the issues submitted
15 to you fairly and partially and without fear or favor.

16 Now, members of the jury, if you find that
17 the government has failed to establish the guilt of the
18 defendant beyond a reasonable doubt, you should find him
19 not guilty. On the other hand, if you find that the
20 government has established the guilt of the defendant
21 beyond a reasonable doubt, you should not hesitate because
22 of sympathy, or any other reason, to render a verdict
23 of guilty.

24 Are there any exceptions, gentlemen? If so,
25 I will hear you at the side bar.

1 mch

2 (At the side bar.)

3 MR. WEISENFELD: Your Honor, I would ask you to
4 permit the jury to read the entire grand jury testimony
5 in order to clarify your charge, in order to take it into
6 context.

7 MR. BLOCH: It is not in evidence.

8 THE COURT: Put it in evidence.

9 MR. BLOCH: I asked you to stipulate to everything,
10 and you told me you would not stipulate to everything.

11 THE COURT: Do you have any objection to
12 opening the case and putting it in entirely?

13 MR. BLOCH: I don't see the point.

14 THE COURT: I don't see that it is material
15 or necessary. I don't see how you can possibly mistake
16 the context in the light of this case and the evidence
17 that has gone in here. There is no room for mistake about
18 context.

19 MR. WEISENFELD: Your Honor, the language that
20 is used is not quite the same as was used here. There
21 was no statement about willingly or knowingly. The question
22 was, "Did you ever submit false invoices"--

23 THE COURT: It is not in evidence and that is it.
24 I don't think it is material.

25 MR. BLOCH: The government has no exceptions.

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2 (In open court.)

3 (Alternate jurors excused and a marshal was
4 sworn.)

5 (The jury retired at 3:05 P.M. to begin its
6 deliberations.)
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2 THE COURT: Send in a copy of the indictment
3 containing just the counts to be submitted to the jury.

4 Will you check it, Mr. Bloch?

5 Mr. Weisenfeld, will you step up and check the
6 copy of the indictment?

7 MR. BLOCH: It appears to be in order.

8 MR. WEISENFELD: Yes, your Honor.

9 THE COURT: Give it to the marshal.

10 (At 3:45 P.M. the jury took its place in the
11 jury box.)

12 THE COURT: I have your note:

13 "Do we have to vote on individual counts
14 (all 15) guilty or not guilty or does one count prove
15 the guilty or not guilty." And it is signed Mrs. Celia
16 Kruglack.

17 You have to decide each count separately,
18 each count submitted to you. I think your confusion arises
19 from the fact that I instructed you that on Count 41
20 you could find him guilty if you found that he knowingly
21 submitted any one false invoice. The question was:

22 "Q Dr. Napoli, did you ever submit a fictitious
23 invoice in the sense that you either filed for a patient
24 you had not seen or filed in excess of a number of visits
25 you actually administered?

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2 "A No, I have not."

3 That question includes the word "ever." --

4 "Did you ever submit a fictitious invoice." He could be
5 found guilty on Count 41 if he knowingly submitted a
6 single false invoice knowing that it contained false,
7 fraudulent, fictitious statements. But you must decide
8 each count that is submitted to you separately. I hope
9 that is clear to you. If it is not, send another note.

10 (The jury retired to continue its deliberations
11 at 3:50 P.M.)

12 (The jury took its place in the jury box at
13 5:25 P.M.)

14 THE COURT: Will you stipulate that all 12
15 jurors are in the box?

16 MR. BLOCH: Yes.

17 MR. WEISENFELD: Yes.

18 THE COURT: Proceed.

19 THE CLERK: Madam forelady, has the jury agreed
20 upon a verdict?

21 THE FORELADY: Yes.

22 THE COURT: What is your verdict on Count 21?

23 THE FORELADY: Guilty.

24 THE CLERK: What is your verdict on Count 22?

25 THE FORELADY: Guilty.

muh.

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2 THE CLERK: Count 23?
3 THE FORELADY: Guilty.
4 THE CLERK: Count 25?
5 THE FORELADY: Guilty.
6 THE CLERK: Count 26?
7 THE FORELADY: Guilty.
8 THE CLERK: Count 27?
9 THE FORELADY: Guilty.
10 THE CLERK: Count 28?
11 THE FORELADY: Guilty.
12 THE CLERK: Count 30?
13 THE FORELADY: Guilty.
14 THE CLERK: Count 32?
15 THE FORELADY: Guilty.
16 THE CLERK: Count 33?
17 THE FORELADY: Guilty.
18 THE CLERK: Count 34?
19 THE FORELADY: Guilty.
20 THE CLERK: Count 25?
21 THE FORELADY: Guilty.
22 THE CLERK: Count 36?
23 THE FORELADY: Guilty.
24 THE CLERK: Count 38?
25 THE FORELADY: Guilty.

1 mmh.

2 THE CLERK: Count 39?

3 THE FORELADY: Guilty.

4 THE CLERK: Count 41?

5 THE FORELADY: Guilty.

6 THE CLERK: You say you find the defendant
7 guilty on all counts?

8 THE FORELADY: Yes.

9 THE CLERK: So say you all?

10 (The jury answered in the affirmative.)

11 MR. WEISENFELD: Your Honor, can we poll the
12 jury?

13 THE COURT: Yes.

14 (Jury polled)

15 THE COURT: I want to thank you for the careful
16 attention you gave to the case. I never comment on
17 a jury's verdict. As I told you, that decision is entirely
18 up to you. I firmly believe in that principle. The
19 judge is never to comment on a verdict, for that is your
20 function.

21 I do want to thank you for the very careful
22 attention you paid to the witnesses and to the care
23 which you obviously gave the case. You are excused now
24 until tomorrow morning at 9 o'clock.

25 THE CLERK: They are excused. The jury clerk

1 mch.

2 has given me the certificates of jury service.

3 THE COURT: I think it is a good idea not to
4 discuss the case once you are through with it. Good night.

5 (Jury dischargedd.)

6 THE COURT: Do you have any motions?

7 MR. WEISENFELD: Yes, I move that the Court
8 set aside the verdict as against the weight of the
9 evidence.

10 THE COURT: Denied.

11 How is the 24th for sentencing?

12 MR. BLOCH: Of May?

13 THE COURT: May.

14 MR. BLOCH: Satisfactory to the government.

15 MR. WEISENFELD: Your Honor, would it be
16 possible for an early June date, instead of May 24th?

17 THE COURT: No, June is not possible. Any time
18 in May.

19 MR. WEISENFELD: The 31st is acceptable.

20 THE COURT: I would prefer not.

21 MR. WEISENFELD: The 27th.

22 THE COURT: Yes, at 10 o'clock.

23 What is the bail status?

24 MR. BLOCH: The government has no objection to
25 continuing bail.

1 mmh

2 MR. WEISENFELD: I believe he is on his own
3 recognizance.

4 THE COURT: The defendant is released on his
5 own recognizance pending sentence.

6 I want you to be sure to be here, Mr. Napoli.
7 I don't want matters complicated. And that date has
8 been set, the 27th at 10 A.M.

9 MR. BLOCH: Your Honor, is it in this courtroom?

10 THE COURT: It will be in this courtroom, yes.
11 I want a pre-sentence report. If you will take the
12 defendant promptly to the Probation people, it would
13 speed the pre-sentence report.

14 MR. WEISENFELD: They are closed for today.

15 THE COURT: Probably.

16 I will not require and don't want any sentencing
17 memorandum. Whatever you have to say, I will want it in
18 open court at the time of sentence.

19 MR. WEISENFELD: None will be prepared, but if
20 there are some letters from people in the community, how
21 shall we handle that?

22 THE COURT: Any letters you want, send it through
23 the Probation Department.

24 MR. BLOCH: May we put our views through the
25 Probation Department?

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THE COURT: No, I don't need your views. Whatever there is to be said about sentence will be said in open court.

MR. BLOCH: Some judges criticize us when we give them some fact at the last minute.

THE COURT: I don't agree with that. I will hear you in open court. I don't like things in criminal cases that are not in the full light of day.

MR. BLOCH: Yes, your Honor.

THE COURT: Good night.

(Whereupon an adjournment was taken to May 27, 1977, at 10 o'clock.)

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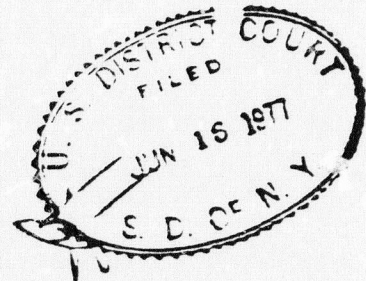
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SENTENCING MINUTES BEFORE HON. LLOYD F. MacMAHON, D.J.,
DATED MAY 24, 1977

1 mcs

2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK



4 -----X
5 UNITED STATES OF AMERICA, :

6 vs. :

7 ANTHONY NAPOLI, :

8 Defendant. :
9 -----X

77-Cr. 167 LFM

10 Before:

11 HON. LLOYD F. MacMAHON,

12 District Judge.

13 New York, May 24, 1977;
14 10.30 o'clock a.m.
15 (Room 518)

16 APPEARANCES:

17 ROBERT B. FISKE, JR., Esq.,

18 United States Attorney for the
19 Southern District of New York;

20 BY: PETER BLOCH, Esq.,

Assistant United States Attorney.

21 JEFFREY WEISENFELD, Esq.,

22 Attorney for Defendant.
23 ---
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2 THE COURT: I will hear the Government.

3 MR. BLOCH: Your Honor, in the pre-sentence
4 report I notice one error that is probably not of any great
5 significance, but I just want the record to be clear. It
6 says that the Lee Avenue Clinic had been owned and
7 operated by Ingber and Stiles, who had been investigated
8 by the Government. The defendant did work in the Galler
9 Clinic which at one time was owned by Ingber and Stiles,
10 and then became owned by Kavalier. Kavalier did not own
11 the Lee Avenue Clinic but ran the chiropractic concession.
12 Kavalier is now serving a four-year sentence for Medicaid
13 fraud. That is the only error.

14 THE COURT: Do you agree that that is an error?

15 MR. WEISENFELD: It is my understanding that
16 the Galler Avenue Clinic --

17 THE COURT: Do you have a different understanding?

18 MR. WEISENFELD: No, the understanding is the
19 same.

20 MR. BLOCH: Your Honor the Government just
21 wants to very briefly state to you what it would have stated
22 in the sentencing memorandum and that is that it considers
23 Medicaid fraud to be of a very serious kind. It is a very
24 difficult crime to prove in that it takes a lot of resources
25 to prove a small amount of fraud. We believe that the

1
2 general deterrence value to people who generally commit
3 these crimes, who are well educated people, well known and
4 not risks can't be underestimated, so that these programs
5 by these frauds don't become endangered by loss of public
6 confidence.

7 THE COURT: Mr. Weisenfeld.

8 MR. WEISENFELD: Yes, your Honor.

9 First, there were two matters that were raised
10 in the trial that may have left an unfavorable impression.
11 They were related to the tax matter where there is an
12 allegations of an understatement of \$5000 in Dr. Napoli's
13 1973 income tax return.

14 We have submitted a letter.

15 THE COURT: I have read it.

16 MR. WEISENFELD: I believe the worst that
17 happened was that he made a mistake. There was no
18 intentional understatement of income. There was no
19 attempt to avoid any tax.

20 THE COURT: I won't consider that. I'm only
21 concerned with the crime of which he was convicted.

22 MR. WEISENFELD: Mr. Bloch in summation with
23 reference to the character witnesses indicated and brought
24 out that the private patients were treated for 30 minutes
25 whereas the Medicaid patients were only treated for three

1 nos

2 or four minutes. Medicaid only reimburses for very
3 limited chiropractic services. Therefore those were
4 the only services performed. A private patient comes in
5 for massage and other services. I don't want your Honor
6 to have an impression that the people less fortunate on
7 Medicaid in any manner received short shrift in the treat-
8 ment they obtained. They obtained treatment they were
9 entitled to to the best of Dr. Napoli's ability.

10 Having read the probation report, your Honor
11 is aware of Dr. Napoli stands here convicted of.

12 THE COURT: I'm well aware of it because of
13 the trial, not the probation report.

14 MR. WEISENFELD: Well, your Honor, both factors.

15 However, I think the probation report is very
16 accurate and very correct and conforms with my impression
17 of Dr. Napoli as a person, independent of what happened here
18 in court and what he was convicted of: that he is a
19 dedicated man both in his practice, in his family and in
20 his community.

21 I would like to make a very brief distinction.
22 We can't argue with the jury's verdict at this point.
23 Dr. Napoli has been convicted. I think that there is a
24 distinction between people who are decent people who make
25 mistakes, commit criminal acts, and those who are truly

1 nos

2 criminals. I think it is very clear that Dr. Napoli is
3 not a criminal and that at the worst stands convicted
4 of criminal acts which I can characterize as very foolish
5 acts on his behalf.

6 On the whole, though, your Honor, this man's
7 life has been more productive than disruptive. He has
8 given much more to his community and family and society
9 than he has taken. Very generally, and I'm not minimizing
10 the impact of any criminal statute or violation, yes, it
11 is serious, but I think that Dr. Napoli should be sentenced
12 as much for who he is as well as what he is convicted of.
13 Certainly it is a very significant factor in sentencing.

14 Now, Dr. Napoli is a family man, well respected
15 in his community. The many letters indicate that he is
16 patient, decent, honest, avails his time and efforts to
17 the community without regard to his own personal needs.
18 On top of that this man has never earned a great deal of
19 money. His income tax in 1972 showed \$22,000 and should
20 have shown \$25,000 because of accounting error. That
21 is basically what this man has been earning in his best
22 years. Maybe slightly more in some.

23 In the process of this trial information as
24 to Dr. Napoli was carried in the newspapers, everybody in
25 the community was aware of it, and his children and his

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family suffered very great humiliation and degradation. The man is going to lose his practice. The man is going to be sued in a civil suit by the Government and whatever damages there were there will be a \$2000 fine for each count. Then there is a double the actual fraud involved provision. This man is out of funds as of right now. He borrowed money for the trial fee. He is going to be selling his house. His wife has made an application to get on welfare until she can get a job. This family has been destroyed. Certainly it can very easily be said that he should have thought of that before he got into trouble.

I'm not here to dispute what the jury found him guilty of. Many of us make mistakes, serious mistakes that have an adverse impact. This was four years ago. No matter what he was charged with, this man has already paid a terrible price for whatever he did or whatever the jury found that he did.

Moreover, even if you look at this from a deterrence point of view, there are two aspects of deterrence:

Will it deter Dr. Napoli and will it deter others from similar courses of conduct. I think I can say without any reservation whatsoever that Dr. Napoli

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2 learned a lesson from this and that Dr. Napoli for the
3 rest of his life will never ever be involved in any
4 criminal violation of any sort. Any sane person, any
5 person that has any brains -- Dr. Napoli is an intelligent
6 man and what happened to him will deter him from ever being
7 involved in anything.

8 I don't think incarceration, certainly not a
9 long one, is required to teach Dr. Napoli a lesson. He
10 has learned. What about the rest of society? Any
11 thinking doctor -- we are talking about Medicaid frauds,
12 we are talking about doctors, chiropractors, podiatrists --
13 just the mere fact of the disgrace, losing a practice,
14 the impact it has on the family, the civil penalties which
15 are onerous, \$2000 per fraudulent claim, and it isn't
16 limited to those in the indictment because, for example,
17 Dr. Kavalier's case, which was mentioned, they had in that
18 case 93 alleged fraudulent claims. It amounted to
19 \$186,000 in the civil action and for all I know the same
20 type of civil action and the same type of amount will be
21 pending as to Dr. Napoli. These are heavy blows, your
22 Honor. These are not slaps on the wrist.

23 I stand here today to ask the Court -- Dr.
24 Napoli is here to take his medicine. The jury has found
25 him guilty. He is here. I just ask that that dose of

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medicine be as humane, as lenient as your Honor sees fit. This man has suffered. I don't see any gain to society or to anybody for making that suffering any greater.

I urge your Honor to take into consideration the character of this man and all other aspects of his life other than what your Honor heard in the courtroom. People have come to bat for him. Many people have written letters to this Court to the Probation office, I urge your Honor in this one instance, because of his basically decent character to be as lenient as you can possibly be. Hopefully, if your Honor sees fit, your Honor will not impose incarceration. Perhaps there will be some alternative, some volunteer service for no pay which he can do. That can be of more good to society than any incarceration.

Taking the facts into consideration again, I implore your Honor to exercise clemency and leniency in this case. I believe that Dr. Napoli is a fine man who will never be in trouble again. It will have no detrimental effect on peoples' attitude to the Medicaid problem.

Thank you very much for the occasion of addressing your Honor. That is all I have. Dr. Napoli informs me he wishes to rely on my statements and does

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2 not wish to say anything.

3 THE COURT: Nevertheless I must ask you,
4 Dr. Napoli, whether you wish to say anything in mitigation
5 of your sentence before the Court pronounces sentence.

6 THE DEFENDANT: No, sir, I don't have anything
7 further to say.

8 THE COURT: These were serious, deliberate,
9 repeated crimes. You weren't hungry. You were greedy.
10 I find no mitigating circumstances at all for an educated
11 man, a man who has had all the privileges that this country
12 could give him, an opportunity to rise above his station
13 in life, climb the ladder of success, and then he has got
14 to cheat and steal and defraud the very Government that
15 makes it possible. You are not some poor man addicted
16 to narcotics who can't control what he is doing. This
17 was a free choice on your part and was deliberate,
18 deliberate -- repeated. You preyed on the poor, the
19 weak. There is nothing in the record on this crime on
20 which the Court can find any basis for leniency at all.
21 You added to that by going before a grand jury and com-
22 mitting perjury under oath. The jury apparently believed
23 you committed perjury here on the trial, because they
24 surely didn't believe you.

25 To let this go unpunished or without imposing

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2 a prison sentence is to license that kind of fraud.
3 It is to announce to the whole medical profession that
4 Medicaid is some kind of a grab bag for greedy doctors.
5 I feel sorry for your family, very sorry for them.
6 Unfortunately when people commit crimes there are always
7 innocent victims. Your children are at an age where
8 they need a father. I'm mindful of that too. But we
9 just can't let this go. It is time you were made to
10 realize and your colleagues were made to realize that this
11 is a serious crime; that this is a program for which
12 the American public is paying through the nose to aid the
13 poor, to give them medical help, and it can't be bothered
14 with scoundrels like you who sabotage it for their own
15 greed.

16 The Court sentences you to two years and
17 a \$10,000 fine on Counts 21 through 23, Counts 25 through
18 28, Count 30, Counts 32 through 36, Count 38, Count 39.
19 The prison sentence and fine imposed upon those are to
20 run concurrently with each other.

21 The Court sentences you to two years and
22 fines you \$10,000 on Count 41. The execution of the
23 prison sentence on Count 41 is suspended and you are placed
24 on probation for a period of two years to run consecutively
25 to the prison sentence imposed on the earlier counts.

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2 The fine on the earlier counts and on Count
3 41 are to run consecutively for a total fine of \$20,000
4 and you are to stand committed until the total fine is
5 paid.

6 It is my duty to advise you that you have the
7 right to appeal this conviction; that if you wish to do
8 so you must file a notice of appeal with the Clerk of the
9 Court within 10 days and that if you have no funds to hire
10 a lawyer to prosecute your appeal the Court will appoint
11 one free of charge.

12 Do you understand that, Dr. Napoli?

13 THE DEFENDANT: Yes.

14 THE COURT: Is there a motion with respect to
15 the open counts?

16 MR. WEISENFELD: Your Honor, at this point I
17 move to dismiss all of the open counts.

18 MR. BLOCH: No objection.

19 THE COURT: All open counts are dismissed.

20 MR. SEISENFELD: Your Honor, if I may, I have
21 two short applications.

22 The first is that Dr. Napoli's family and Dr.
23 Napoli at this point are in debt and are unable to hire a
24 lawyer. I'm not a member of the CJA appellate or trial
25 panel. Upon a proper showing we are going to request

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2 that the Court assign an attorney.

3 THE COURT: I would want a very substantial
4 showing. I'm not disposed to believe Dr. Napoli in view
5 of the very fraud and perjury of which he stands convicted.
6 The jury obviously found him guilty of perjury on his
7 testimony in this case. I would want a certified
8 balance sheet before I will assign counsel.

9 MR. WEISENFELD: Yes, Your Honor. As I stated,
10 that type of balance has been submitted to the New York
11 Department of Welfare. If that is not sufficient we
12 will attempt to get more information.

13 THE COURT: If you make an adequate showing
14 I will see that counsel is appointed. The showing has
15 to be convincing and certified by a Certified Public
16 Accountant.

17 MR. WEISENFELD: At this time I request the
18 suspension of the execution of judgment for a period of
19 time to be set by the Court. The family is in the process
20 of selling their house and Dr. Napoli is attempting to sell
21 what is left of his practice. His wife is attempting
22 to get on welfare. Dr. Napoli is no threat to flee
23 the jurisdiction. We will ask for 30 days to wind up
24 his affairs so when he goes --

25 THE COURT: I assume you want bail pending

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2 appeal. That is all I'm concerned with at this point.

3 MR. WEISENFELD: Yes.

4 Would your Honor consider granting the same
5 bail limits pending appeal?

6 THE COURT: As soon as your notice of appeal
7 has been filed I will entertain such an application.

8 MR. WEISENFELD: May we come back this after-
9 noon?

10 THE COURT: You can come back within five
11 minutes.

12 MR. WEISENFELD: I will get one and be right
13 back, your Honor.

14 (Recess.)

15 MR. WEISENFELD: Your Honor, the application
16 is that Dr. Napoli be permitted to remain on the same
17 bail which I believe is a PRB pending the appeal in
18 this matter.

19 I think it is quite clear that Dr. Napoli is
20 absolutely no threat to run away. Whenever the Second
21 Circuit makes its decision, which will probably be in
22 August or September of this year, then Dr. Napoli will
23 surrender himself and be incarcerated. It seems to me
24 there is no danger to the community from this type of a
25 situation. There is no threat. He was here on

1 each and every occasion.

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3 Dr. Napoli should be afforded bail pending
4 appeal, the same as pretrial. I see no reason why it
5 should not be granted. We hope that your Honor will grant
6 bail pending the appeal. Dr. Napoli has no funds, as I
7 stated. If he cannot make an appropriate showing I am
8 willing to take the appeal for nothing so the appeal will
9 be filed within the Second Circuit guidelines whether it
10 is done CJA or whether it is done by myself on behalf of
11 Dr. Napoli.

12 MR. BLOCH: No objection.

13 THE COURT: The defendant will be released
14 on his own recognizance pending appeal on condition that
15 he prosecute the appeal within the minimum time allowed by
16 the rules of the Court of Appeals and that he file a notice
17 of appeal before the day is out.

18 MR. WEISENFELD: Thank you, your Honor.

19 THE COURT: And that minimum time is without
20 extensions.

21 MR. WEISENFELD: Yes, your Honor. I will
22 present to the Court no applications for extensions.

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BEST COPY AVAILABLE

United States of America vs. **JUDGMENT OF CONVICTION** **402a** **United States District Court** for
(Filed May 24, 1977) **SOUTHERN DISTRICT OF NEW YORK**
DEFENDANT **ANTHONY NAPOLI**

DOCKETED **77 Cr. 167-LPM**

In the presence of the attorney for the government
the defendant appeared in person on this date **May 24, 1977**

COUNSEL ☐ WITHOUT COUNSEL However, the court advised defendant of right to counsel, and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.
☒ WITH COUNSEL **Jaffrey Weisenfeld** (Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea. ☐ NOLO CONTENDERE. ☒ NOT GUILTY

There being a finding verdict of ☐ NOT GUILTY. Defendant is discharged.
☒ GUILTY.

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of **unlawfully, wilfully and knowingly falsifying and causing to be falsified material facts, and making and causing to be made false statements and making and causing to be made and using and causing to be used false writings and documents knowing the same to contain false statements and entries as charged in Counts 21 through 23, 25 through 28, 30, 32 through 36, 38 and 39, (Title 18, U.S.C., Sections 1001 and 2.); and unlawfully, wilfully and knowingly making a false material declaration during a proceeding before a Grand Jury as charged in Count 41. (Title 18, U.S.C., Section 1623.)**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER **TWO (2) YEARS AND FINED \$10,000. on each of Counts 21 through 23, 25 through 28, 30, 32 through 36, 38 and 39, to run concurrently with each other.**

TWO (2) YEARS AND FINED \$10,000. on Count 41. Execution of the prison sentence on Count 41 is SUSPENDED and defendant is placed on PROBATION for a period of TWO (2) YEARS to run consecutively to the prison sentence imposed on Counts 21 through 23, 25 through 28, 30, 32 through 36, 38 and 39, subject to the standing probation order of this Court.

SPECIAL CONDITIONS OF PROBATION **The FINE imposed on Counts 21 through 23, 25 through 28, 30, 32 through 36, 38 and 39 and the Fine imposed on Count 41 are to run consecutively, for a total FINE of \$20,000., and defendant is to stand committed until the total fine is paid.**

Defendant is released on his own recognizance pending appeal on the condition that the appeal is pursued within the minimum time allowed by the Court of Appeal.

Counts 1 through 20, 24, 29, 31, 37 and 40 are dismissed on motion of defense counsel with the consent of the Government.

ADDITIONAL CONDITIONS OF PROBATION In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION The court orders commitment to the custody of the Attorney General and recommends, **SOUTHERN DISTRICT OF NEW YORK**

ANTHONY NAPOLI

SIGNED BY ☒ U.S. District Judge ☐ U.S. Magistrate

Date **7**

77 Cr. 167-LPM
CERTIFIED AS A TRUE COPY
THE CLERK
X DEPUTY

COURT OF APPEALS
SECOND CIRCUIT

UNITED STATES OF AMERICA,
Appellee,

- against -

ANTHONY NAPOLI,
Defendant-Appellant.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF

SS.:

I, Kevin E. Thomas, being duly sworn, depose and say that deponent is not a party to the action,
is over 18 years of age and resides at 1515 Macombs Road, Bronx, N.Y. 10452,

That on the 15th day of July, 19 77 at One St. Andrews Plaza
New York, N. Y.

deponent served the annexed

Appendix

upon

U.S. Atty Southern Dist.
Robert Fiske Jr.

the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein,

Sworn to before me, this 15th
day of July, 19 77

Kevin E. Thomas

Print name beneath signature

KEVIN E. THOMAS

Robert T. Brin
ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1979

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